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*Committee on the Internal Market and Consumer Protection*

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**2011/0438(COD)**

11.12.2012

# **COMPROMISE AMENDMENTS 1 - 92**

## **Clusters 1, 2, 4, 5, 6, 7, 8, 9 and 10**

**Draft report**  
**Marc Tarabella**  
(PE489.699v01)

on the proposal for a directive of the European Parliament and of the Council  
on public procurement  
(COM(2011)0896 – C7-0006/2012 – 2011/0438(COD))



**Amendment 1**

**EPP, S&D, ALDE, Greens, ECR, GUE, EFD**

Compromise amendment replacing AM 8 (Tarabella), AM 217 (Harbour Kožušník), AM 218 (Weisgerber, Verheyen, Collin-Langen, Schwab), AM 219 (Engel, Gyürk, Schwab, Gáll-Pelcz, Poupakis, Pietikäinen), AM 220 (van de Camp), AM 221 (Arias Echeverría)

**Proposal for a directive**

**Recital 15**

*Text proposed by the Commission*

(15) *There is a widespread need for additional flexibility **and in particular for wider access to a procurement procedure** providing for negotiations, **as is explicitly foreseen in the** Agreement, where negotiation is allowed in all procedures. Contracting authorities should, **unless otherwise provided in the legislation of the Member State concerned**, be able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where open or restricted procedures without negotiations are not likely to **lead to satisfactory procurement** outcomes. This procedure should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate **of** cross-border tenders.*

*Amendment*

(15) *Contracting authorities require additional flexibility **to choose** procurement **procedures** providing for negotiations. **The Union rules on public procurement should align to the Government Procurement** Agreement, where negotiation is allowed in all procedures. Contracting authorities should be able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where **the classic** open or restricted procedures without negotiations are not likely to **deliver** satisfactory outcomes. This procedure should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate **in attracting** cross-border tenders.*

Or. en

## **Amendment 2**

### **EPP, S&D, ALDE, Greens, ECR, GUE, EFD**

Compromise amendment replacing AM 44 (Tarabella), AM 652 (Harbour, Kožušník, Creutzmann), AM 653 (Engel, Schwab, Corazza Bildt),

#### **Proposal for a directive**

##### **Article 24 – paragraph 1 – subparagraph 3**

###### *Text proposed by the Commission*

Member States *may* provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

###### *Amendment*

Member States *shall* provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

Or. en

## **Amendment 3**

### **EPP, S&D, ALDE, Greens, ECR, GUE, EFD**

Compromise amendment replacing AM 45 (Tarabella), AM 656 (cp1) (Harbour, Kožušník) AM 657 (Weisgerber, Verheyen, Collin-Langen, Mayer, Schwab) AM 658 (Engel, Schwab, Corazza Bildt), AM 659 (van de Camp)

#### **Proposal for a directive**

##### **Article 24 – paragraph 1 – subparagraph 4 – introductory part**

###### *Text proposed by the Commission*

*They may also* provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:

###### *Amendment*

*Member States shall* provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:

Or. en

## **Amendment 4**

### **EPP, S&D, ALDE, Greens, ECR, GUE, EFD**

Compromise amendment replacing AM 46 (Tarabella), AM 673 (Schaldemose), AM 675 (Weisgerber, Verheyen, Collin-Langen, Mayer, Schwab), AM 676 (Engel, Gyürk, Schwab, Gáll-Pelcz, Corazza Bildt ), AM 677 (van de Camp), AM 678 (Tarabella)

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

***Member States may decide not to transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.***

***deleted***

Or. en

**Amendment 5**

**EPP, S&D, ALDE, Greens, ECR, GUE, EFD**

Compromise amendment replacing AM 47 (Tarabella), AM 686 (Weisgerber, Verheyen, Collin-Langen, Mayer) AM 687 (Correia de Campos), AM 688 (Essayah), AM 689 (Harkin), AM 690 (Creutzmann)

**Proposal for a directive**  
**Article 25 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

The minimum time limit for the receipt of tenders shall be 40 days from the date on which the contract notice was sent

COM text is the compromise.

Or. en

**Amendment 6**

**EPP, S&D, ALDE, Greens, ECR, GUE, EFD**

Compromise amendment replacing AM 49 (Tarabella), AM 699 (Weisgerber, Verheyen, Collin-Langen, Mayer), AM 700 (Essayah), AM 701 (Harkin), AM 702 (Creutzmann)

**Proposal for a directive**  
**Article 26 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the

COM text is the compromise.

invitation to confirm interest is sent

Or. en

#### **Amendment 7**

**EPP, S&D, ALDE, Greens, ECR, GUE, EFD**

Compromise amendment replacing AM 51 (Tarabella), AM 704 (Weisgerber, Verheyen, Collin-Langen, Mayer), AM 705 (Harbour Kožušník), AM 706 (Essayah), AM 707 (Harkin),

#### **Proposal for a directive**

##### **Article 26 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

The minimum time limit for the receipt of tenders shall be 35 days from the date on which the invitation to tender is sent.

COM text is the compromise.

Or. en

#### **Amendment 8**

**EPP, S&D, ALDE, ECR, GUE, EFD**

Compromise amendment replacing AM 53 (Tarabella), AM 723 (Rühle), AM 724 (Weisgerber, Verheyen, Collin-Langen, Mayer), AM 725 (Creutzmann),

#### **Proposal for a directive**

##### **Article 27 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

COM text is the compromise.

Or. en

## **Amendment 9**

**S&D, EPP, ECR, Greens, ALDE, GUE**

Compromise amendment replacing AM 727 (Rühle), AM 728 (Tarabella), AM 729 (Harbour Kožušník), AM 730 (Harkin), AM 731 (Harbour Kožušník), AM 732 (Harbour Kožušník), AM 733 (Schaldemose), AM 734 (Pietikäinen), AM 735 (Tarabella), AM 736 (Rühle), AM 737 (Harbour Kožušník), AM 738 (Simon), AM 739 (Verheyen, Collin-Langen), AM 740 (Harbour Kožušník), AM 741 (Rühle), AM 742 (Simon), AM 743 (Verheyen, Collin-Langen), AM 744 (Creutzmann)

### **Proposal for a directive**

#### **Article 27 – paragraph 3**

##### *Text proposed by the Commission*

3. Contracting authorities shall negotiate with tenderers the tenders submitted by them to improve the content of the offers in order to better correspond to the award criteria and minimum requirements referred to in the second subparagraph of paragraph 1.

*The following shall not be changed in the course of the negotiations:*

*(a) the description of the procurement;*

*(b) the part of the technical specifications which define the minimum requirements;*

*(c) the award criteria.*

##### *Amendment*

3. Contracting authorities shall negotiate with tenderers the tenders submitted by them, to improve the content of the offers in order to better correspond to the award criteria and minimum requirements referred to in the second subparagraph of paragraph 1.

*The minimum requirements, the object of the procurement, and the award criteria shall not be subject to negotiations.*

Or. en

## **Amendment 10**

**S&D, EPP, ALDE, Greens, ECR, EFD**

Compromise amendment replacing AM 775 (Tarabella), AM 776 (Gustafsson, de Jong), AM 777 (Harbour, Kožušník, Engel, Creutzmann), AM 778 (Engel), AM 779 (Harbour, Kožušník, Engel), AM 780 (Harkin), AM 781 (Harbour Kožušník, Engel), AM 782 (Harkin), AM 783 (Harbour, Kožušník, Engel), AM 784 (Harbour, Kožušník, Engel), AM 785 (Harbour, Kožušník, Engel), AM 786 (Harbour, Kožušník, Engel)

### **Proposal for a directive**

#### **Article 29**

Article 29

Innovation Partnership

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works provided that they correspond to the agreed performance levels and costs.

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, ***possibly up to*** the manufacturing of the supply or the provision of the services. ***It shall provide for*** intermediate targets to be attained by the partner and provide for ***payment of the*** remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided ***that it has acquired the relevant intellectual property rights***.

3. The contract shall be awarded ***in accordance with the rules for a competitive procedure with negotiation set out in Article 27***.

Article 29

Innovation Partnership

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works provided that they correspond to the agreed performance levels and costs. ***The contract setting up the innovation partnership shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a)***.

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, ***which may include*** the manufacturing of the supply or the provision of the services ***or the completion of the works***. ***The partnership shall set*** intermediate targets to be attained by the partner and provide for remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided ***the contracting authority has indicated in the procurement documents under which conditions it may make use of this discretion to terminate the partnership***.

3. The contract shall be awarded ***according to this paragraph***.

***In the procurement documents, contracting authorities shall indicate which elements define the minimum requirements to be met. The indications***

*shall be sufficiently precise so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.*

*The minimum time limit for receipt of requests to participate shall be 35 days from the date on which the contract notice is sent, or where a prior information notice is used as a means of calling for competition, 35 days from the date on which the invitation to confirm interests is sent. The minimum time limit for the receipt of initial tenders shall be 35 days from the date on which the invitation is sent.*

*Contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted, to improve the content to ensure that these tenders better fulfil the award criteria specified in the procurement documents.*

*During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated, are informed in writing of any changes to the technical specifications of other procurement documents other than those setting out the minimum requirements, providing sufficient time to allow such tenderers to modify and re-submit amended tenders following these changes.*

*In accordance with Article 18, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific*

*information.*

*The minimum requirements and the award criteria shall not be subject to negotiations.*

*Once the deadline for submitting tenders has expired, and before proceeding to their examination, contracting authorities may specify a weighting attached to the subheadings of an award criterion defined in advance in accordance with Article 66(5), provided that*

*(a) the contract award criteria set out in the contract documents or the contract notice are unaltered;*

*(b) this does not include new elements which would have affected the preparation of the tenders;*

*(c) this does not give rise to discrimination against any one of the tenderers.*

*Innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated, by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting authority shall clearly indicate whether it will use this option.*

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the **tenderers'** capacity **and experience** in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the **candidates'** capacity in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that

cannot be met by existing solutions. ***The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).***

4. The structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value ***and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.***

***Contracting authorities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.***

cannot be met by existing solutions.

4. The ***contracting authorities shall ensure that the*** structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The ***estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.***

Or. en

#### **Amendment 11**

**S&D, EPP, ECR, Greens, ALDE, GUE**

Compromise amendment replacing AM 788 (Tarabella), AM 789 (Harbour Kožušník), AM 790 (Baldassarre, Comi)

#### **Proposal for a directive**

#### **Article 30 – paragraph 1**

*Text proposed by the Commission*

1. Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication only in the cases laid down in paragraphs (2) to (5).

*Amendment*

*No AM - Compromise is the Commission text*

Or. en

## Amendment 12

### S&D, EPP, ALDE, Greens, ECR, GUE, EFD

Compromise amendment replacing AM 791 (Harbour Kožušník), AM 792 (Rühle), AM 793 (Weisgerber, Verheyen, Collin-Langen), AM 794 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski, Corazza Bildt), AM 795 (Cofferati), AM 796 (de Jong Gustafsson), AM 797 (Simon), AM 798 (Creutzmann), AM 799 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), AM 800 (Cofferati), AM 801 (Rühle), AM 802 (de Jong Gustafsson), AM 803 (Weisgerber, Verheyen, Collin-Langen, Mayer), AM 804 (Simon), AM 805 (Tarabella), AM 806 (Verheyen, Collin-Langen), AM 807 (Gebhardt), AM 808 (Rühle), AM 809 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), AM 810 (Harbour Kožušník), AM 811 (Simon), AM 812 (Tarabella)

## Proposal for a directive

### Article 30 – paragraph 2

#### *Text proposed by the Commission*

2. The negotiated procedure without prior publication may be **foreseen** for public works contracts, public supply contracts and public service contracts in any of the following cases:
- (a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure **or** a restricted procedure provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the **national oversight body designated according to Article 84** where they so request.
- (b) where the aim of the procurement is the creation or obtention of a work of art;
- (c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
- (i) the absence of competition for technical reasons;
- (ii) the protection of patents, copyrights or other intellectual property rights;

#### *Amendment*

2. The negotiated procedure without prior publication may be **used** for public works contracts, public supply contracts and public service contracts in any of the following cases:
- (a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure, a restricted procedure **or a negotiated procedure with prior publication**, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the **Member States' competent authorities** where they so request.
- (b) where the aim of the procurement is the creation or obtention of a work of art **or an artistic performance**;
- (c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
- (i) the absence of competition for technical reasons;
- (ii) the protection of patents, copyrights or other intellectual property rights;

(iii) the protection of other exclusive rights,

This exception only applies when **no reasonable alternative or substitute exists** and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by **force majeure**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

(iii) the protection of other exclusive rights, **including ownership of a property site**.

This exception only applies when the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by **events unforeseeable by the contracting authority**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Or. en

**Amendment 13**

**S&D, Greens, GUE**

Compromise amendment replacing AM 12 Rapporteur, AM 247 Malcolm Harbour, Edvard Kožušník, AM 246 van de Camp, AM 245 Hedie Rühle, ITRE 13, EMPL 8

**Proposal for a directive**

**Recital 27**

*Text proposed by the Commission*

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be ***opened up*** to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions ***so as to obtain a sufficient level of competition***. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

**Linked to Article 40**

*Amendment*

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be ***open*** to competition ***as well as to achieve objectives of sustainability***. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions, ***standards and technical specifications in the marketplace, including those drawn up on the basis of performance criteria linked to the life cycle and the sustainability of the production process of works, supplies and services***. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where

the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits. ***In order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.***

Or. en

#### **Amendment 14**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 249 Salvini Speroni, 248 de Jong Gustafsson, EMPL 9, ENVI 11

#### **Proposal for a directive**

##### **Recital 28**

###### *Text proposed by the Commission*

(28) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-)national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors **and** environmental organisations, can participate, and that the label is accessible and available to all interested parties.

##### **Linked to Article 41**

###### *Amendment*

(28) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular ***labels or certificate***, such as the European Eco-label, (multi-)national eco-labels or any other label ***or certificate*** provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors, environmental organisations **and social partners**, can participate, and that the label is accessible and available to all interested parties.

Or. en

## Amendment 15

EPP, S&D, ALDE, ECR, Greens, GUE

Compromise amendment replacing 256 Rühle, 257 Pietikäinen, 258 Salvini Speroni, INTA 9, ENVI 12, EMPL 12

### Proposal for a directive

#### Recital 34

*Text proposed by the Commission*

(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental *or* social **obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.**

**Linked to Articles 54-55**

*Amendment*

(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation, ***in exploitation of human trafficking and child labour*** or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental, social *or labour law provisions referred to in the general principles of this Directive.*

Or. en

## Amendment 16

EPP, S&D, ALDE, ECR, Greens

Compromise amendment replacing AM 259 de Jong Gustafsson

### Proposal for a directive

#### Recital 35

*Text proposed by the Commission*

(35) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any

*Amendment*

(35) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any

criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules. Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on these grounds. Economic operators should have the possibility to request that contracting authorities examine the compliance measures taken with a view to possible admission to the procurement procedure.

**Linked to Article 55**

criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules. Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on these grounds. Economic operators should have the possibility to request that contracting authorities examine the compliance measures taken with a view to possible admission to the procurement procedure.

Or. en

**Amendment 17**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 260 Pietikäinen

**Proposal for a directive**

**Recital 36**

*Text proposed by the Commission*

(36) Contracting authorities may require that environmental management measures or schemes are to be applied during the performance of a public contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-

*Amendment*

(36) Contracting authorities may require that environmental management measures or schemes are to be applied during the performance of a public contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-

management and audit scheme (EMAS)<sup>1</sup>, can demonstrate that the economic operator has the technical capability to perform the contract. A description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence, where the economic operator concerned has no access to such environmental management registration schemes or no possibility of obtaining them within the relevant time limits.

management and audit scheme (EMAS)<sup>2</sup>, can demonstrate that the economic operator has the technical capability to perform the contract. A description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence, where the economic operator concerned has no access to such environmental management registration schemes or no possibility of obtaining them within the relevant time limits.

Or. en

### **Amendment 18**

**EPP, S&D, ECR, Greens, GUE**

Compromise amendment replacing EMPL 13, 14 Rapporteur, 261 Rühle, INTA 10, ENVI 13, 262 Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Andreas Schwab, 263 Rapporteur, 264 Creutzmann, REGI 10, ITRE 23

### **Proposal for a directive**

#### **Recital 37**

#### *Text proposed by the Commission*

(37) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. These criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting authorities require high-quality works, supplies and services that are optimally suited to their needs, for instance where the chosen award criteria include factors linked to the production process. As a result, contracting authorities should be allowed to adopt as award criteria *either* ‘the most economically advantageous tender’ *or* ‘the lowest cost’, taking into

#### *Amendment*

(37) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. These criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting authorities require high-quality works, supplies and services that are optimally suited to their needs, for instance where the chosen award criteria include factors linked to the production process. As a result, contracting authorities should adopt as award criteria ‘the most economically advantageous tender’ taking into account that *it should refer to* quality

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<sup>1</sup> OJ L 342, 22.12.2009, p. 1.

<sup>2</sup> OJ L 342, 22.12.2009, p. 1.

account that *in the latter case they are free to set adequate* quality standards by using technical specifications or contract performance conditions.

*and sustainability* standards by using technical specifications or contract performance conditions.

## Linked to Article 66

Or. en

### **Amendment 19**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing ENVI 14, HEDh 269, REGI 11, EMPL 14, de Jong 266, Stihler 267, Hudghton 268, Rapporteur 15, Frank Engel, Andreas Schwab, Konstantinos Poupakis, Anna Maria Corazza Bildt 265, INTA 11

### **Proposal for a directive**

#### **Recital 38**

*Text proposed by the Commission*

(38) *Where* contracting authorities **choose to award** a contract to the most economically advantageous tender, **they** must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

## Linked to Article 66

*Amendment*

(38) Contracting authorities **awarding** a contract **according** to the most economically advantageous tender **criterion**, must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria, **which may include economic, environmental and social characteristics**, depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective **and fair** competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

**Amendment 20****EPP, S&D, ECR, Greens, GUE**

Compromise amendment replacing 17 Rapporteur, 277 Creutzmann, 273 Rühle, 274 Frank Engel, Wim van de Camp, Konstantinos Poupakis, 275 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski; 276 Pietikäinen, ITRE 25

**Proposal for a directive****Recital 40**

*Text proposed by the Commission*

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender ***and the lowest cost*** using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. ***Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.***

*Amendment*

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties.. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as ***research,*** development, production, ***transport,*** use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored.

**Amendment 21****EPP, S&D, ECR, Greens, GUE**

Compromise amendment replacing 280 Rühle, 281 Garcés Ramón , 282 Malcolm Harbour, Edvard Kožušník , 286 Stihler, EMPL 15, AM 18 Tarabella, 287 Hedh, 283 Handzlik, Thun, Trzaskowski, 284 Gebhardt Sippel, 285 Pietikäinen, 288 Salvini Speroni, 289 Belet, 290 Creutzmann, EMPL 15, ENVI 16, INTA 12, ITRE 27, Tarabella 26

## Proposal for a directive

### Recital 41

#### *Text proposed by the Commission*

(41) Furthermore, in technical specifications **and** in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may **also be allowed to** include, in the award **critterion of the most economically advantageous tender**, characteristics related to the working conditions **of the persons directly participating in the process of production or provision in question**. Those characteristics may **only** concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to

#### *Amendment*

(41) Furthermore, in technical specifications, in award criteria **and in contract performance clauses**, contracting authorities should be allowed to refer to a specific production process **including for example social and environmental aspects**, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may include, in the award **criteria and in contract performance clauses**, characteristics related to the working, **employment and environmental conditions, and require the production of certificate or labels drawn up by independent bodies attesting compliance by the economic operator with rules and standards set in those fields, which apply where the works are executed, services provided or goods produced or supplied, as set out in international conventions, in Union and national law as well as in collective agreements concluded in accordance with national law and practices which respect Union law**. Those characteristics may concern **among others** the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any

which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender *which offers the best value for money*.

Or. en

## **Amendment 22**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing 291 Evelyne Gebhardt, Birgit Sippel, 19 Rapporteur, INTA 13, JURI 6

### **Proposal for a directive**

#### **Recital 42**

##### *Text proposed by the Commission*

(42) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. In order to prevent possible disadvantages during contract performance, contracting authorities should be obliged to ask for an explanation of the price charged where a

##### *Amendment*

(42) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. In order to prevent possible disadvantages during contract performance, contracting authorities should be obliged to ask for an explanation of the price charged where a

tender significantly undercuts the prices demanded by other tenderers. Where the tenderer cannot provide a sufficient explanation, the contracting authority should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting authority has established that the abnormally low price charged results from non-compliance with social, labour or environmental law *or international labour law provisions*.

**Linked to Article 69**

tender significantly undercuts the prices demanded by other tenderers. Where the tenderer cannot provide a sufficient explanation, the contracting authority should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting authority has established that the abnormally low price charged results from non-compliance with social, labour or environmental law *provisions referred to in the general principles of this Directive*.

Or. en

**Amendment 23**

**EPP, S&D, ECR**

Compromise amendment replacing 293 Evelyne Gebhardt, Birgit Sippel, 294 Morten Løkkegaard, Jens Rohde, Jürgen Creutzmann; 296 CREutzmann, ENVI 17, 295 Hedh, REGI 12, 20 Rapporteur, EMPL 16, 292 Schaldemose, ITRE 28, 20 Rapporteur

**Proposal for a directive**

**Recital 43**

*Text proposed by the Commission*

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply

*Amendment*

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are *directly* linked to the subject-matter of the contract *and to the principle of the procurement related to compliance with environmental, social and labour law provisions* and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational *or professional* training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements — applicable during performance of the

in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

### **Linked to Article 70**

contract — to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

Or. en

### **Amendment 24**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing 301 Garces Ramon, 21 Tarabella, EMPL 3 cp 2, EMPL 4, EMPL 17, AM 299 Schaldemose, EMPL 18, AM 181 Stihler, ENVI 4

### **Proposal for a directive**

#### **Recital 44**

*Text proposed by the Commission*

***(44) The laws, regulations and collective agreements, at both national and Union level, that are in force in the areas of employment conditions and safety at work apply during the performance of a public contract, provided that such rules, and their application, comply with Union law.***

In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect, non-compliance with those obligations **may** be considered to be grave misconduct on the part of the economic operator concerned, **liable to** lead to the exclusion of that economic operator from the procedure for

*Amendment*

***(44) Member State should ensure that economic operators comply with the environmental, social and labour law provisions which apply at the place where the works are executed, services provided or goods produced or supplied, as set out in international conventions listed in Annex XI, Union and national law as well as collective agreements concluded in accordance with national law and practices which respect Union law.*** In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect, non-compliance with those obligations **should**

the award of a public contract.

be considered to be grave misconduct on the part of the economic operator concerned, **which may** lead to the exclusion of that economic operator from the procedure for the award of a public contract..

Or. en

## **Amendment 25**

### **S&D, EPP, ALDE, Greens, ECR, GUE, EFD**

Compromise amendment replacing AM 587 (Essayah), REGI 33, EMPL 24, ITRE 36, AM 588 (Repo), AM 589 (Essayah), AM 590 (Traabella), AM 591 (Arias Echeverria), AM 592 (Pietikäinen), AM 593 (de Jong), AM 594 (Cofferati), AM 595 (Pietikäinen), AM 596 (Hedh), JURI 19, REGI 34, AM 597 (Cofferati)

## **Proposal for a directive**

### **Article 15**

#### *Text proposed by the Commission*

#### Article 15

#### Principles of procurement

Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate way.

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.

#### *Amendment*

#### Article 15

#### Principles of procurement

**1.** Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate way.

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.

**2. Member States shall ensure that economic operators comply with the environmental, social and labour law provisions which apply at the place where the works are executed, services provided or goods produced or supplied, as set out in international conventions listed in Annex XI, in Union and national law as well as in collective agreements concluded in accordance with national law and practices which respect Union law.**

Or. en

## Amendment 26

### S&D, EPP, ALDE, Greens, ECR

Compromise amendment replacing AM 60 Rapporteur, 896 Pietikäinen, 895 Rühle, 897 Lokkegaard Creutzmann, Rohde, ENVI 31, ITRE 55, 901 Pietikäinen, 900 Rapporteur, 899 Rühle, 902 Creutzmann, 61 Rapporteur, REGI 57, ITRE56, 898 Gebhardt Sippel, 903 Gebhardt Sippel, REGI 58, 905 Stihler, 62 Rapporteur, 904 Garces Ramon, TRAN 16, 906 Pietikäinen, 907 Alvaro Creutzmann, 908 Rühle, 909 Salvini Speroni, 63-69 Rapporteur, REGI 59, 910 de Jong Gustafsson, TRAN 17, ITRE 57 to 63, 911 Pietikäinen, 912 Repo, EMPL 27-29, 70 Rapporteur, 914 Gebhardt, 915 Pietikäinen, 916 Manders, 913 rühle, REGI 60, 71 Rapporteur, 917 Rühle, 918 van de Camp, 919 Harbour Kozusnik Creutzmann, EMPL 30-32, 920 Repo, 74 Rapporteur, 921 Rühle, 922 van de Camp, 923 Harbour Kozusnik Creutzmann, 924 de Jong Gustafsson, 925 Juvin, 926 Rühle, 927 Lokkegaard Creutzmann, Rohde, 76 Rapporteur, 928 Rühle, 929 de Jong Gustafsson

## Proposal for a directive

### Article 40

#### *Text proposed by the Commission*

#### Article 40

##### Technical specifications

1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

The technical specifications shall also specify whether the transfer of intellectual property rights will be required.

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account

#### *Amendment*

#### Article 40

##### Technical specifications

1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply ***provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.***

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

The technical specifications shall also specify whether the transfer of intellectual property rights will be required.

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account

accessibility criteria for people with disabilities or design for all users.

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.

2. Technical specifications shall guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when those do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be

accessibility criteria for people with disabilities or design for all users.

***For all procurement, technical specifications shall be drawn up so as to ensure that the products, services and works subject to the contract meet the requirements of data protection law at the time of the design of the processing of personal data (data protection by design)***

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria ***for persons with disabilities or design for all users*** are concerned, be defined by reference thereto.

2. Technical specifications shall guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

(b) by reference to technical specifications and, in order of preference, ***and without discrimination as to development method***, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when those do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the

accompanied by the words ‘or equivalent’;

(c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words "or equivalent".

5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

6. Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for

works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

(c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words "or equivalent".

5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

6. Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for

works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

Or. en

**Amendment 27**  
**S&D, Greens, GUE**

Compromise amendment replacing AM 155-160 Rapporteur, AM 1561 to 1568, ITRE 114, EMPL 54, ENVI 64

**Proposal for a directive**  
**Annex VIII**

*Text proposed by the Commission*

Annex VIII

Definition of certain technical specifications

For the purposes of this Directive:

(1) "technical specification" means one of the following:

(a) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance,

*Amendment*

Annex VIII

Definition of certain technical specifications

For the purposes of this Directive:

(1) "technical specification" means one of the following:

(a) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance,

design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes **and** methods at any stage of the life cycle of the works;**those characteristics also include** rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

(b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes **and** methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

(2) "standard" means a technical specification approved by a recognised **standardising body** for repeated or

design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes, methods, **and life-cycle costing approach** at any stage of the life cycle of the works; **the organisation, qualification and experience of the staff assigned to performing the contract in question, as well as working conditions**; rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

(b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes, methods **and life-cycle costing approach** at any stage of the life cycle of the supply or service and conformity assessment procedures; **the organisation, qualification and experience of the staff assigned to performing the contract in question, as well as working conditions**;

(2) "standard" means a technical specification **established by consensus and** approved by a recognised **standardisation**

continuous **application, compliance** with which **is** not compulsory and which falls into one of the following categories:

- (a) international standard: a standard adopted by an international standards organisation and made available to the general public,
- (b) European standard: a standard adopted by a European standards organisation and made available to the general public,
- (c) national standard: a standard adopted by a national standards organisation and made available to the general public;
- (3) "European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;
- (4) "Common technical specification" means a technical specification laid down in accordance with a procedure recognised by the Member States or in accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the *Official Journal of the European Union*;
- (5) "Technical reference" means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of

**organisation** for repeated or continuous **use** with which **compliance** not compulsory and which falls into one of the following categories

- (a) international standard: a standard adopted by an international standards organisation and made available to the general public,
- (b) European standard: a standard adopted by a European standards organisation and made available to the general public,
- (c) national standard: a standard adopted by a national standards organisation and made available to the general public;
- (3) "European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;
- (4) "Common technical specification" means a technical specification laid down in accordance with a procedure recognised by the Member States or, **in the field of information and communication technologies, in** accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the *Official Journal of the European Union*;
- (5) "Technical reference" means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of

market needs.

market needs.

Or. en

## Amendment 28

S&D, EPP, Greens, ECR, GUE

Compromise amendment replacing AMs 930 to 964, AMs 80 Rapporteur, ENVI 40-41

### Proposal for a directive

#### Article 41

*Text proposed by the Commission*

*Amendment*

Article 41

Article 41

Labels

*Certificates and labels*

1. Where contracting authorities lay down environmental, social or other **characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3)** they may require that these works, services or supplies **bear a specific label**, provided that all of the following conditions are fulfilled:

1. Where contracting authorities lay down **in the technical specifications, the award criteria or the contract performance clauses** environmental, social or other requirements **or criteria**, they may require **a specific label or certificate as means of proof** that these works, services or supplies **correspond to such requirements or criteriaprovided** that all of the following conditions are fulfilled:

(a) the requirements **for the label only concern characteristics which are linked to the subject-matter of the contract and** are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

(a) the requirements **to be met in order to obtain the label or the certificate** are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

(b) the requirements **for the label are drawn up on the basis of scientific information or** based on other objectively verifiable and non-discriminatory criteria;

(b) the requirements **to be met in order to obtain the label or the certificate** are **drawn up on the basis of scientific information or** based on other objectively verifiable and non-discriminatory criteria;

(c) the labels are established in an open and transparent procedure in which all stakeholders, including **government bodies, consumers, manufacturers, distributors and environmental organisations, may participate**,

(c) the labels **or certificates** are established in an open and transparent procedure in which all **relevant** stakeholders, including **governmental and non governmental organisations, have a substantial role.**,

(d) the labels are accessible to all interested parties;

(d) the labels **or certificates** are accessible to all interested parties;

(e) the *criteria of* the label are set by a third party which is independent from the economic operator applying for the label.

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities.

***For products that do not bear the label,*** contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

2. Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to ***those of*** the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

(e) the ***requirements to be met in order to obtain*** the label, ***or the certificate*** are set by a third party which is independent from the economic operator applying for the label ***or certificate***. ***The third party may be a specific national or governmental body or organisation.***

Contracting authorities requiring a specific label ***or certificate*** shall accept all equivalent labels that fulfil the requirements of the ***specific*** label ***or certificate*** indicated by the contracting authorities. Contracting authorities shall also accept ***other appropriate means of proving such requirements, which may include*** a technical dossier of the manufacturer or other appropriate means of proof ***where the economic operator concerned has no access to the label, or no possibility of obtaining them within the relevant time limit, provided that the lack of access is not attributable to the economic operator concerned. It shall be the responsibility of the tenderer to prove equivalence with the label requested.***

Where a label ***or certificate*** fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to the detailed specifications of that label ***or certificate***, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Or. en

## **Amendment 29**

**S&D, EPP, Greens, ECR, GUE**

Compromise amendment replacing AM 968 to 974, ITRE 65

## Proposal for a directive

### Article 42

*Text proposed by the Commission*

#### Article 42

Test reports, certification and other means of proof

1. Contracting authorities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications.

Where contracting authorities require the submission of certificates drawn up by **recognised bodies attesting conformity with a particular technical specification**, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, **such as** a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

3. Recognised bodies within the meaning of paragraph 1 of this Article shall be test and calibration laboratories and any certification and inspection bodies accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council.

4. Member States shall make available to other Member States, upon request, any

*Amendment*

#### Article 42

Test reports, certification and other means of proof

Contracting authorities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with **requirements or criteria set out in** the technical specifications, **the award criteria or the contract performance clauses**.

Where contracting authorities require the submission of certificates drawn up by **a specific conformity assessment body**, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.

Contracting authorities shall accept other appropriate **and equivalent** means of proof than those referred to in paragraph 1, **which may include** a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits **provided that the lack of access is not attributable to the economic operator concerned. It shall be the responsibility of the tenderer to prove equivalence with the certificates or test reports requested.**

3. Recognised bodies within the meaning of paragraph 1 of this Article shall be test and calibration laboratories and any certification and inspection bodies accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council.

4. Member States shall make available to other Member States, upon request, any

information related to the evidence and documents submitted in accordance with Article 40(6), Article 41 and paragraphs 1, 2 and 3 of this Article **to prove compliance with technical requirements**. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.

information related to the evidence and documents submitted in accordance with Article 40(6), Article 41 and paragraphs 1, 2 and 3 of this Article. The competent authorities of the Member State of establishment **of the economic operator** shall provide this information in accordance with Article 88.

Or. en

### **Amendment 30**

#### **S&D, EPP, ALDE, Greens, ECR, GUE**

Compromise amendment replacing AM 85 (Rapporteur), REGI 64, EMPL 34, ITRE 72, 86 (Rapporteur), TRAN 19, 1036 (Creutzmann), INTA 27, 1035 (Salvini Speroni), REGI 65, 1031 (Alvaro Creutzmann), 1029 (Rühle), 1033 (Hedh), 1030 (Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski), 1032 Simon, 1034 (Sabine Verheyen, Birgit Collin-Langen), 87 (Rapporteur), 1037 (Rapporteur); 1038 (Rochefort), 1039 (Rühle), ITRE 73, AM 88 (Rapporteur), 1040 (de Jong Gustafsson), JURI 27

### **Proposal for a directive** **Article 54**

#### *Text proposed by the Commission*

Article 54

General principles

1. Contracts shall be awarded on the basis of the criteria laid down in Articles 66 to 69, provided that the following cumulative conditions are fulfilled:

- (a) the tender complies with the requirements, conditions and criteria set out in the contract notice or the invitation to confirm interest and in the procurement documents, taking into account Article 43;
- (b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64.

#### *Amendment*

Article 54

General principles

1. Contracts shall be awarded on the basis of the criteria laid down in Articles 66 to 69, provided that the following cumulative conditions are fulfilled:

- (a) the tender complies with the requirements, conditions and criteria set out in the contract notice or the invitation to confirm interest and in the procurement documents, taking into account Article 43;
- (b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64.

2. Contracting authorities *may decide* not to award a contract to the tenderer submitting the best tender where *they have* established that the tender does not comply, *at least in an equivalent manner*, with *obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI*.

3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection 1 of this section.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

Contracting authorities *shall* not award a contract to the tenderer submitting the best tender where *it has been* established, *based on clear and sufficient evidence*, that the tender does not comply with *the environmental, social and labour law provisions referred to Article 15(2)*.

3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection 1 of this section.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

Or. en

### **Amendment 31**

**S&D, EPP, ALDE, Greens, ECR, GUE**

Compromise amendment replacing AM 89 (Rapporteur), JURI 28, ITRE 74, EMPL 35, ITRE 75, 1041 (Rühle), 1042 (Iacolino Tarabella), 1043 Gebhardt Sippel), 1045 (Baldassarre Comi), 1044 (Iacolino, Tarabella), EMPL 36, INTA 28, INTA 229, AM 90 (Rapporteur), JURI 29, REGI 66, 1053 (Salvini, Speroni), AM 1046 Frank Engel, Wim van de Camp, Anna Maria Corazza Bildt, AM 1047 Malcolm Harbour, Edvard Kožušník, AM 1048 Schwab, AM 91 Rapporteur, TRAN 20, ITRE 76, AM 1050 Simon, REGI 67, AM 1054 Sihler, AM 1051 Hedh, AM 1052 Verheyen, Collin Langen, AM 1049 Alvaro Creutzmann, EMPL 37, 1056 Ceutzmann, ITRE 77, AM 1057 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, AM 1059 Schwab Creutzmann, EMPL 38, ITRE 78, 1059 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1060

Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1063 Cofferati, 92 Rapporteur, 1062 Schwab, Creutzmann, 1064 Hedh, REGI 68, 1065 Busoi, 1061 Rapporteur, 1066 Correia de Campos, 1067 Macovei, 1068 Macovei, 1069 Rühle, 1070 Simon, 93 Raporteur, 1071 Cofferati, REGI 69, 1072 Schwab Creutzmann, 94 Rapporteur, 1055 Gebhardt Sippel, 1073 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1074 Comi, 1075 Gebhardt Sippel; EMPL 39, 95 Rapoprteur, TRAN 21, ENVI 42, 1076 Iacolino, 1077 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1078 Comi, 1079 Gebhardt Sippel, 96 Rapporteur, 97 Raporteur, TRAN 22.

## **Proposal for a directive**

### **Article 55**

#### *Text proposed by the Commission*

#### Article 55

##### Exclusion grounds

1. Any candidate or tenderer that has been the subject of a conviction by final judgment for one of the following reasons shall be excluded from participation in a public contract:

- (a) participation in a criminal organisation, as defined in Article 2(1) of Council Framework Decision 2008/841/JHA;
- (b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union<sup>1</sup> and Article 2 of Council Framework Decision 2003/568/JHA<sup>2</sup> as well as corruption as defined in the national law of the contracting authority or the economic operator;
- (c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities;
- (d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision

<sup>1</sup> OJ C 195, 25.6.1997, p. 1.

<sup>2</sup> OJ L 192, 31.7.2003, p. 54.

<sup>3</sup> OJ C 195, 25.6.1997, p. 1.

<sup>4</sup> OJ L 192, 31.7.2003, p. 54.

#### *Amendment*

#### Article 55

##### Exclusion grounds

1. Any candidate or tenderer that has been the subject of a conviction by final judgment for one of the following reasons shall be excluded from participation in a public contract:

- (a) participation in a criminal organisation, as defined in Article 2(1) of Council Framework Decision 2008/841/JHA;
- (b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union<sup>3</sup> and Article 2 of Council Framework Decision 2003/568/JHA<sup>4</sup> as well as corruption as defined in the national law of the contracting authority or the economic operator;
- (c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities;
- (d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision

2002/475/JHA<sup>1</sup> respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

(e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC.

The obligation to exclude a candidate or tenderer from participation in a public contract shall also apply where the conviction by final judgment has condemned company directors or any other any persons having powers of representation, decision or control in respect of the candidate or tenderer.

2. Any economic operator shall be excluded from participation in a contract where the contracting authority is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

3. A contracting authority may exclude from participation in a public contract any economic operator if one of the following conditions is fulfilled:

(a) where it is aware of any **violation** of obligations **established by Union**

2002/475/JHA<sup>2</sup> respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

(e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC.

***(ea) participation in exploitation of human trafficking and child labour covered by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.***

The obligation to exclude a candidate or tenderer from participation in a public contract shall also apply where the conviction by final judgment has condemned company directors or any other any persons having powers of representation, decision or control in respect of the candidate or tenderer. ***Where they arise in the course of the procedure to select the contractor, the reasons for exclusion listed in the first subparagraph shall likewise serve to exclude the company concerned from the contract award procedure.***

2. Any economic operator shall be excluded from participation in a contract where the contracting authority is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

3. A contracting authority may exclude from participation in a public contract any economic operator if one of the following conditions is fulfilled:

(a) where it is aware of any **serious or repeated violations** of obligations in the

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<sup>1</sup> OJ L 164, 22.6.2002, p.3.

<sup>2</sup> OJ L 164, 22.6.2002, p.3.

**legislation** in the field of social *and* labour law *or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.*

(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator *or by the court, where it has entered into an arrangement with creditors*, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

*(c) where the contracting authority can demonstrate by any means that the economic operator is guilty of other grave professional misconduct;*

(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature *with the same contracting authority.*

*In order to apply the ground for exclusion referred to in point (d) of the first subparagraph, contracting authorities shall provide a method for the assessment of contractual performance that is based*

field of social, *environmental or* labour law, *as referred to in Article 15(2);*

(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

*For the purposes of applying point (b), a contracting authority cannot exclude from participation in a public contract an economic operator which has entered into an arrangement with creditors or whose assets are under administration if the economic operator can prove that it is capable of pursuing its activities for the foreseeable duration of contract.*

(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature *whether deliberately or through negligence;*

*(da) where a conflict of interests could not have been effectively remedied according to the procedure laid down in Article 21(3).*

***on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment shall be communicated to the contractor in question, which shall be given the opportunity to object to the findings and to obtain judicial protection.***

4. Any candidate or tenderer that is in one of the situations referred to in paragraphs 1, 2 and 3 may provide the contracting authority with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.

For this purpose, the candidate or tenderer shall prove that it has compensated any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct. Contracting authorities shall evaluate the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority considers the measures to be insufficient, it shall state the reasons for its decision.

5. Member States shall ensure that contracting authorities and economic operators can easily obtain information and assistance with regard to the application of this Article through the liaison point provided for in Article 88.

6. Member States shall make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.

4. Any candidate or tenderer that is in one of the situations referred to in paragraphs 1, 2 and 3 may provide the contracting authority with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.

For this purpose, the candidate or tenderer shall prove that it has compensated any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct. Contracting authorities shall evaluate the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority considers the measures to be insufficient, it shall state the reasons for its decision.

5. Member States shall ensure that contracting authorities and economic operators can easily obtain information and assistance with regard to the application of this Article through the liaison point provided for in Article 88.

6. Member States shall make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.

Or. en

## Amendment 32

### S&D, EPP, (ALDE), Greens, ECR

Compromise amendment replacing AMs 98 Rapporteur, TRAN 23, ENVI 43, JURI 30, 1080 (Rühle), 1081 (Engel), 1082 (Rochefort), 99 Rapporteur, ITRE 79, 1083 (de Jong Gustafsson), 1084 (Comi) 1085 (Buşoi), 1086 (de Jong, Gustafsson), 1087 (Frank Engel, András Gyürk, Ildikó Gáll-Pelcz), 1088 (Comi), 1089 (Busoi), 1090 (de Jong, Mikael Gustafsson), 1091 (Comi), 1092 (Shwab), 100 Rapporteur, ENVI 44, JURI 31, 101 Rapporteur, 102 Rapporteur, ENVI 45, REGI 70, TRAN 24

## Proposal for a directive

### Article 56

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Article 56	Article 56
Selection criteria	Selection criteria
<p>1. Contracting authorities may establish conditions for participation relating to:</p> <p>(a) suitability to pursue the professional activity;</p> <p>(b) economic and financial standing;</p> <p>(c) technical and professional ability.</p> <p>They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, but they shall not provide requirements other than those listed.</p> <p>Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the contract to be awarded. All requirements shall be <b><i>related and strictly proportionate</i></b> to the subject-matter of the contract, taking into account the need to ensure genuine competition.</p> <p>2. With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled on one of the professional or trade registers kept in their Member State of establishment, as described in Annex</p>	<p>1. Contracting authorities may establish conditions for participation relating to:</p> <p>(a) suitability to pursue the professional activity;</p> <p>(b) economic and financial standing;</p> <p>(c) technical and professional ability.</p> <p>They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, but they shall not provide requirements other than those listed.</p> <p>Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the contract to be awarded. All requirements shall be <b><i>linked</i></b> to the subject-matter of the contract, taking into account the need to ensure genuine competition.</p> <p>2. With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled on one of the professional or trade registers kept in their Member State of establishment, as described in Annex</p>

## XII.

In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

3. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

The minimum yearly turnover shall not exceed *three* times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the second subparagraph of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on

## XII.

In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

3. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

The minimum yearly turnover shall not exceed *two* times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the second subparagraph of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on

the basis of the estimated value of the framework agreement.

4. With regard to technical and professional ability, contracting authorities may require that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. Contracting authorities may conclude that economic operators will not perform the contract to an appropriate quality standard where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.

In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

5. Contracting authorities shall indicate the required conditions of participation, which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

the basis of the estimated value of the framework agreement.

4. With regard to technical and professional ability, contracting authorities may require that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. Contracting authorities may conclude that economic operators will not perform the contract to an appropriate quality standard where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.

In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

5. Contracting authorities shall indicate the required conditions of participation, which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

Or. en

### **Amendment 33**

#### **EPP, S&D, ALDE, Greens, ECR, GUE**

Compromise amendment replacing AMs EMPL 41, JURI 34, 1125, 1150 (Evelyne Gebhardt, Birgit Sippel), 1139, 1156 (Gebhardt), 1127, 1131, 1138, 115, 116, 114 (Rapporteur), 1134, 1149, 11453, 1191 (Rühle), 1141, 1161 (Manders), INTA 30, 31, 32, 33, 34, ENVI 50, 51, TRAN 26, 27, 28; 1123, 1128, 1135, 1145, 1152, 1159 (Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, Malgorzata Handzlik, [Konstantinos Poupakis], Anna Maria Corazza Bildt), 1124, 1129, 1137, 1146, 1154 (Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, [Andreas Schwab] [Hans-Peter Mayer]), 1143, 1148, 1162 (Creutzmann), 1126, 1130, 1140 (Rochefort), 1142, 1147, 1157 (Lokkegaard, Rohde, Creutzmann), 1144, 1151 (Schaldemose), 1136 (Weiler), 1132

(Pietikäinen), 1133 Hedh, 1158 Pietikäinen, 1160 Hedh, Regi 74, Regi 73, ITRE 84, 1155 Malcolm Harbour, Edvard Kožušník, ITRE 85, 1167 (Pietikäinen), 1171 Manders, ENVI 52, 1164 Rühle, 1170 Salvini Speroni, 1165 Corazza bildt, 1166 Dorfmann, 1668 Løkkegaard, Jens Rohde, 1169 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1172 Hudghton, 1173 Stihler, 1174 Grech, TRAN 29, ITRE 86, REGI 75, 117 Rapporteur, 1175 Hedh, 1176 Creutzmann, 1177 Manders, 1178 Hedh, 1185 Stihler, ITRE 87, Rapporteur 118, 1179 Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen, Anna Maria Corazza Bildt, 1181 Pietikäinen, 1182 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1183 Hedh, REGI 76, 119 Rapporteur, 1180 Rühle, 1184 Creutzmann, TRAN 30, 1186 Schwab, 1187 Harbour Kožušník, 1188 Creutzmann, 1189 Rühle, 1192 Gebhardt, Sippel, 1163 Cofferati, 1190 Tarabella, 1193 Garces ramon, 1194 Cofferati, 1195 Schaldemose, ITRE 88, 120 Rapporteur, 1196 Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, Malgorzata Handzlik; 1196 Gebhardt Sippel, ENVI 53, INTA 35, 1198 Pietikäinen, 1199 Hedh, 121 Rapporteur, TRAN 31, 1200 Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer, Andreas Schwab, 1201 Rühle, 122 Rapporteur, 1203 Belet, 1202 Gebhardt Sippel, 1204 Baldassarre, Comi, 1207 Belet, 123 Rapporteur, INTA 36, ENVI 54, 1205 Pietikäinen, 1206 Hedh.

## Proposal for a directive

### Article 66

#### *Text proposed by the Commission*

#### Article 66

##### Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the **criteria** on which contracting authorities shall base the award of public contracts shall be **one of the following**:

**(a) the most economically advantageous tender;**

**(b) the lowest cost.**

***Costs may be assessed, on the choice of the contracting authority, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.***

2. The most economically advantageous tender referred to **in point (a) of** paragraph 1 from the point of view of the contracting authority shall be identified on the basis of

#### *Amendment*

#### Article 66

##### Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the **criterion** on which contracting authorities shall base the award of public contracts shall be **the most economically advantageous tender.**

2. The most economically advantageous tender referred to paragraph 1, from the point of view of the contracting authority shall be identified on the basis of criteria

criteria linked to the subject-matter of the public contract in question. **Those** criteria **shall** include, in addition to the price or costs **referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question**, such as:

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental **characteristics** and innovative **character**;

(b) **for service contracts and contracts involving the design of works, the organisation**, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, **with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality**;

(c) after-sales service **and** technical assistance, delivery date and delivery period or period of completion;

(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.

**3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.**

linked to the subject-matter of the public contract in question. **The** criteria **related to the most economically advantageous tender may** include, in addition to the price or costs, **qualitative, environmental and social considerations**, such as

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, **social, environmental and innovative characteristics and the costs over the life-cycle in accordance with Article 67**;

(b) **wherever relevant for the performance of the contract**, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration;

(c) after-sales service, technical assistance, **and delivery conditions such as** delivery date and delivery period or period of completion;

(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.

4. Award criteria shall not confer an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.

**5. In the case referred to in point (a) of paragraph 1** the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

3 Award criteria shall not confer an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.

4. The contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

Or. en

#### **Amendment 34**

##### **EPP, S&D, Greens, ECR, GUE**

Compromise amendment replacing 124 Rapporteur, EMPL 42, 1208, 1212, 1213, 1214, 1215 Creutzmann, 1210 Malcolm Harbour, Edvard Kožušník, 1209 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, ITRE 89, 1211 Manner, 1216 Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde, 1217 Rühle, 1218 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1219 Arias Echeverria, 1222, 1223, 1227, 1228 Creutzmann, 1220 Rühle, 1221 Essayah, 1224 Rühle, 1225 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, ENVI 55, 1226 Rühle, ENVI 56, 1229 Rühle, 1230 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, ENVI 57, 1231 Pietikäinen, 1232 Creutzmann, 1233 Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen, Anja Weisgerber, 1234 van de Camp, 1235 Creutzmann, 1239 van de Camp, 1240 Creutzmann, 1237 Pietikäinen, 1236 Rühle, 1238 and 1241 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, ENVI 58, JURI 35, 1242 de Jong Gustafsson

**Proposal for a directive**  
**Article 67**

*Text proposed by the Commission*

Article 67

Life-cycle costing

1. Life-cycle costing shall to the extent relevant cover the following costs over the life cycle of a product, service or works as defined in point (22) of Article 2:

(a) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs and

(b) external ***environmental*** costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the ***methodology used for the calculation of*** the life-cycle costs. The ***methodology*** used must fulfil all of the following conditions:

(a) it has been drawn up ***on the basis of scientific information or*** is based on ***other*** objectively verifiable and non-discriminatory criteria;

***(b) it has been established for repeated or continuous application;***

(c) it is accessible to all interested parties.

*Amendment*

Article 67

Life-cycle costing

1. Life-cycle costing shall to the extent relevant cover ***part or all of*** the following costs ***borne by contracting authorities*** over the life cycle of a product, service or works as defined in point (22) of Article 2:

(a) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs and

(b) external costs ***such as social or environmental costs***, directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the ***data to be provided by the tenderers and the method which the contracting authority will use to determine the*** life-cycle costs. The ***method used for the assessment of those life-cycle costs*** must fulfil all of the following conditions:

(a) it has been drawn up ***in close consultation with stakeholders and*** is based on objectively verifiable and non-discriminatory criteria;

(c) it is accessible to all interested parties.

***(ca) the data required can be provided with reasonable effort by normally diligent economic operators, including operators from third countries.***

***Contracting authorities shall allow economic operators, including economic operators from third countries, to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority.***

3. ***Whenever a*** common methodology for the calculation of life-cycle costs ***is*** adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, ***it shall be applied where life-cycle costing is*** included in the award criteria referred to in Article 66(1).

A list of such legislative and delegated acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

3. ***Any*** common methodology for the calculation of life-cycle costs adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation ***or as part of a European technical specification shall be deemed to meet the criteria set out in paragraph 2 and may be*** included in the award criteria referred to in Article 66(1).

A list of such legislative and delegated acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

Or. en

### **Amendment 35**

#### **EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AMs 1245, 1297 Rühle, AMs 1247, 1252, 1261, 1268, 1271, 1274, 1277 van de Camp, INTA 37, TRAN 32, 1246 Simon, TRAN 33, 4, 35, 36, JURI 36, 1248 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1250 Hedh, 1249 Comi, 1257 hedh, REGI 77, 1255 Comi, 127 Rapporteur, 1251 Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, 1256 Baldassarre, 1258 Creutzmann, 1253 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1254 Rapporteur, 1259 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 128 Rapporteur, 1260 Baldassarre, 1263 Hedh, REGI 78, 1262 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1264 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1265 Comi, 1266 Hedh, ITRE 90, 129 Rapporteur, 1267 Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer, Andreas Schwab, 1270 Creutzmann, 1269 Tarabella, 1272 Weiler, 130 Rapporteur, 1273 Weiler, TRAN 37, 1275 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1276 Arias Echeverria, EMPL 43, 131 Rapporteur, 1278 Simon, 1279 Simon, REGI 79, 1284 Salvini Speroni, 1280 Gebhardt Sippel, 1281 Simon, 1283 Hedh, 132 Rapporteur, 1282 Pietikäinen, 133 Rapporteur, ITRE 91, 134

Rapporteur, ITRE 92, 1285 Simon, 1286 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1290 Salvini Speroni, TRAN 38, 135 Rapporteur, ENVI 59, HEDh 1289, REGI 80, 1287 Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, 1288 Alvaro Creutzmann, 1291 Pietikäinen, ITRE 93, 1292 Simon, 1293 Comi, 1294 Baldassarre, 1295 Simon, 1296 Harbour

## Proposal for a directive

### Article 69

#### *Text proposed by the Commission*

#### Article 69

Abnormally low tenders

**1. Contracting authorities shall require economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:**

**(a) the price or cost charged is more than 50 % lower than the average price or costs of the remaining tenders**

**(b) the price or cost charged is more than 20 % lower than the price or costs of the second lowest tender;**

**(c) at least five tenders have been submitted.**

**2. Where tenders appear to be abnormally low for other reasons, contracting authorities may also request such explanations.**

**3. The explanations referred to in paragraphs 1 and 2 may in particular relate to:**

(a) the economics of the construction method, the manufacturing process or the services provided;

(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;

(c) the originality of the work, supplies or services proposed by the tenderer;

(d) compliance, **at least in an equivalent**

#### *Amendment*

#### Article 69

Abnormally low tenders

**1. Where tenders appear to be abnormally low in relation to the works, supplies or services, the contracting authority shall require economic operators to explain the price or costs proposed in the tender.**

**2. The explanations referred to in paragraph 1 may in particular relate to:**

(a) the economics of the construction method, the manufacturing process or the services provided;

(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;

(c) the originality of the work, supplies or services proposed by the tenderer;

(d) compliance with **social**,

*manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI or, where not applicable, with other provisions ensuring an equivalent level of protection;*

(e) the possibility of the tenderer obtaining State aid.

4. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with *obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.*

5. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

6. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence and documents produced in relation to details

*environmental and labour law provisions referred to in Article 15(2);*

*(da) compliance with subcontracting requirements set out in Article 71;*

(e) the possibility of the tenderer obtaining State aid.

3. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with *social, environmental and labour law provisions referred to in Article 15(2) nor with data protection law.*

4. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

5. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence and documents produced in relation to details

listed in paragraph 3.

listed in paragraph 3.

Or. en

### **Amendment 36**

#### **EPP, S&D, Greens, ECR**

Compromise amendment replacing AM 1304 Schwab, 1308 Gebhardt Sippel, 1309 de Jong Gustafsson, 1305 Rühle, 1306 Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, 1307 Malcolm Harbour, Edvard Kožušník, 1313 Creutzmann, 1312 Essayah, 1310 Løkkegaard, Jens Rohde, 1311 Comi, 1314 Kosa, EMPL 44, AM 1315 Repo, AM 1316 Pietikäinen

### **Proposal for a directive**

#### **Article 70**

##### *Text proposed by the Commission*

#### Article 70

Conditions for performance of contracts

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, *in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.*

##### *Amendment*

#### Article 70

Conditions for performance of contracts

Contracting authorities may lay down special conditions *linked to the subject matter and* relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may *include economic, innovative, environmental, social or employment-related* considerations.

Or. en

### **Amendment 37**

#### **EPP, S&D, GUE**

Compromise amendment replacing AM 1318 (Sabine Verheyen, Birgit Collin-Langen), 1319 (Riikka Manner), 1320 (Heide Rühle), 1321 (Rapporteur), 1322 (Sergio Gaetano Cofferati), 1323 (Evelyne Gebhardt, Birgit Sippel), TRAN 39, EMPL 45, 1324 (Phil Prendergast), AM 136 (Rapporteur); ITRE 98, AM 1325 Sergio Gaetano Cofferati, 1326 (Evelyne Gebhardt, Birgit Sippel), 1327 (Rapporteur), 1328 (Frank Engel, Andreas Schwab), 1329 (Malcolm Harbour, Edvard Kožušník), 1330 (Heide Rühle), AM 1331 (Peter Simon), AM 1332 (Rapporteur), AM 1333 (Evelyne Gebhardt), 1334 (Lara Comi), 1335 (Raffaele Baldassarre), JURI 37, ITRE 99, TRAN 40, REGI 82, AM 138 (Rapporteur), AM 1336 (Herbert Dorfmann), 1337 (Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski), 139 (Rapporteur), 1338 (Malcolm Harbour, Edvard Kožušník), 1339 (Frank

Engel, Andreas Schwab), 1340 (Heide Rühle); 1341 (Sirpa Pietikäinen), 1342 (Rapporteur), 1343 (Evelyne Gebhardt, Birgit Sippel), 1344 (Peter Simon), 1345 (Sergio Gaetano Cofferati, Raffaele Baldassarre), 1346 (Rapporteur), 1347 (Malcolm Harbour, Edvard Kožušník), 1348 (Evelyne Gebhardt, Birgit Sippel), ENVI 62, INTA 39

## Proposal for a directive

### Article 71

#### *Text proposed by the Commission*

#### Article 71

##### Subcontracting

1. In the procurement documents, the contracting authority **may ask or may be required by a Member State to** ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties **and any proposed subcontractors**.

2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal

#### *Amendment*

#### Article 71

##### Subcontracting

1. In the procurement documents, the contracting authority **shall** ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties.

***1a. After the tenderer has been selected, it shall indicate to the contracting authorities the name, contact details and legal representatives of the subcontractors and any changes related to this information during the course of the contract. This information shall be provided to the tenderer by each subcontractor in the subcontracting chain through the latter's direct contractor. The information shall be updated during the course of the contract.***

2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal

economic operator's liability.

economic operator's liability.

***3a. Member States shall ensure that subcontractors also respect all mandatory legal, regulatory and administrative provisions in force in the Member State of contract performance, which includes the obligations referred to in Article 15(2). To this end, Member States [shall] / [may] provide for a system of liability throughout the subcontracting chain so that the direct contractor of a subcontractor is liable in the event the subcontractor fails to comply with one of these provisions or is insolvent. When a direct contractor is insolvent, such system should foresee that the next solvent direct contractor up the subcontracting chain, including the main contractor, is liable.***

***3b. Member States may provide for more stringent liability rules under national law.***

NB In para 3a, separate vote on [Shall] / [May]

Or. en

**Amendment 38**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 620 (Rühle), AM 621 (Weisgerber, Verheyen, Collin-Langen, Mayer), AM 622 (Harbour, Schwab, Creutzman, Kožušník), AM 623 (de Jong Gustafsson), AM 624 (Simon), AM 625 (Rochefort),

**Proposal for a directive**

**Article 19 - paragraph 7 - subparagraphs 1 and 1a**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that, at the latest 2 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Member States shall ensure that, at the latest 2 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

***For works contracts above the threshold set out in Article 4, Member States may require the use by both contracting authorities and tenderers of building information electronic modelling tools following the general timescales for the implementation of electronic procurement set out in the first subparagraph.***

Or. en

**Amendment 39**

**EPP, S&D, ALDE, Greens, GUE, EFD**

Compromise amendment replacing AM 1099 (Handzlik, von Thun und Hohenstein, Trzaskowski), AM 1100 (Comi), AM 1101 (Schwab, Collin-Langen, Pietikäinen, Corazza-Bildt, Creutzmann), AM 1102 (Lokkegard, Creutzmann, Rohde), AM 1103 (Rühle), AM 1104 (Schwab, Pietikäinen, Corazza-Bildt), AM 1105 (Lokkegard, Creutzmann, Rohde), AM 1106 (Pietikäinen)

**Proposal for a directive**

**Article 59 - paragraphs 2, 3 and 4**

*Text proposed by the Commission*

2. At the latest 2 years after the date provided for in Article 92(1), the passport shall be provided exclusively in electronic form.
3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data.
4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than *six months* earlier.

*Amendment*

2. At the latest two years after the date provided for in Article 92(1), the passport shall be provided exclusively in electronic form.
3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data ***and except where the information can only be gathered from the economic operator itself. In these cases, the economic operator shall deliver the information to the authority in order to obtain the European Procurement Passport.***
4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the ***nature of the individual case or the*** fact that the passport was issued more than ***one year*** earlier. ***In that cases the contracting authority may request more recent or other-types of certificates concerning topics listed in Annex XIII.***  
***The European Procurement Passport must be signed by the economic operator, thereby guaranteeing the validity of the information in the European Procurement Passport.***

Or. en

**Amendment 40**

**EPP, S&D, ALDE, Greens, GUE, EFD**

Compromise amendment replacing AM 162 (Tarabella), AM 163 (Tarabella), AM 164 (Tarabella), AM 1102 (Lokkegard, Creutzmann, Rohde), AM 1106 (Pietikäinen), AM 1573 (Schwab, Engel, Collin-Langen, Verheyen, Poupakis, Creutzmann), AM 1574 (Schwab, Engel, Pietikäinen, Creutzmann), AM 1575 (Schwab, Engel, Poupakis, Pietikäinen, Creutzmann); AM 1576 (Schwab, Engel, Pietikäinen, Creutzmann), AM 1577 (Schwab, Engel, Pietikäinen, Creutzmann), AM 1578 (Schwab, Engel, Creutzmann), AM 1579 (Lokkegard, Creutzmann, Rohde)

**Proposal for a directive**  
**Annex XIII**

*Text proposed by the Commission*

The European Procurement Passport contains the following particulars:

(a) Identification of the economic operator;

(b) Certification that the economic operator has not been the subject of a conviction by final judgment for one of the reasons listed in Article 55(1);

(c) Certification that the economic operator is not the subject of insolvency or winding-up proceedings as referred to in Article 55(3)(b) ;

(d) Where applicable, certification of enrolment in a professional or trade register prescribed in the Member State of establishment, as referred to in Article 56(2);

*Amendment*

The European Procurement Passport contains the following particulars:

(a) Identification of the economic operator, ***company registration number, name, address, bank;***

***(aa) Description of the economic operator, in particular year of establishment, corporate form, owner(s) of the economic operator, members of the board, industry code, short description of the main services and/or main products sold by the economic operator;***

(b) Certification that the economic operator has not been the subject of a conviction by final judgment for one of the reasons listed in Article 55(1);

***(ca) Certification that the economic operator has fulfilled its obligations in relation to payment of taxes or social security systems according to individual Member States laws as referred to in Article 55(2);***

(c) Certification that the economic operator is not the subject of insolvency or winding-up proceedings as referred to in Article 55(3)(b);

***(ca) A declaration on honour, in accordance with Article 22;***

(d) Where applicable, certification of enrolment in a professional or trade register prescribed in the Member State of establishment, as referred to in Article 56(2);

***(da) Key economic indicators of the economic operator for the last three accounting years or, in the case of economic operators which have been in business for less than three years, since the date of commencement of business: gross sales, EBIT and solvency ratio;***

***(db) Key organisational indicators of the economic operator, or in the case of economic operators which have been in business for less than three years, since the date of commencement of business: average number of employees during the last three accounting years and number of employees by the end of the last accounting year;***

(e) Where applicable, certification that the economic operator possesses a particular authorisation or is member of a particular organisation within the meaning of Article 56(2);

(f) Indication of the period of validity of the Passport, which shall be not less than **6 months**.

(e) Where applicable, certification that the economic operator possesses a particular authorisation or is member of a particular organisation within the meaning of Article 56(2);

(f) Indication of the period of validity of the Passport, which shall be not less than **12 months**.

Or. en

#### **Amendment 41**

##### **S&D, EPP, ECR, Greens**

Compromise amendment replacing AM 989 Schaldemose, AM 81 Tarabella, AM 990 Ruehle, AM 996 de Jong, AM 998 Pietikainen, Jaattenmaki, AM 993 Tarabella, AM 992 Schwab, Weisgerber, AM 997 Verheyen, Collin- Langen, AM 1001 Manner, ITRE 68, AM 994 Handzlik, Thun von Hohenstein, Trzaskowski, Dorfmann, AM 995 Harbour, Kozusnik, INTA 24, AM 1002 Prendergast, AM 991 Engel, Juvin, AM 999 Baldassarre, Comi, AM 1000 Creutzmann, JURI 24, AM 82 Tarabella, AM 1003 Tarabella, AM 1004 Handzlik, Thun von Hohenstein, Trzaskowski, Dorfmann, INTA 25, AM 1005 Schwab, Engel, Collin- Langen, verheyen, Weisgerber, AM 83 Tarabella, AM 1006 Tarabella, AM 84 Tarabella, AM 1007 Schwab, Engel, Collin- Langen, Verheyen, Weisgerber, AM 1008 de Jong, Gustafsson, AM 1009 Handzlik, Thun von Hohenstein, Trzaskowski, AM 1010 Handzlik, Thun von Hohenstein, Trzaskowski, AM 1013 Handzlik, Thun von Hohenstein, Trzaskowski, INTA 26, AM 1011 Pietikainen, Corazza Bildt, AM 1012 Ruhle, AM 1014 Ruhle, AM 1015 Schwab, Engel, Collin- Langen, Verheyen, Weisgerber, ITRE 69

#### **Proposal for a directive**

##### **Article 44**

###### *Text proposed by the Commission*

**1. Public contracts may be subdivided into *homogenous or heterogeneous* lots. *For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.***

Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.

2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting

###### *Amendment*

**1. *To facilitate greater access to public procurement by small and medium-sized enterprises*, public contracts may be subdivided into lots.**

Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.

2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting

authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.

***3. Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.***

***Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.***

***Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.***

4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts.

authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.

4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts.

Or. en

#### **Amendment 42**

**&D, EPP, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 252 Harbour, Kozusnik, AM 251 Ruhle, JURI 5, AM

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

(30) In order to foster the involvement of **small and medium-sized enterprises (SMEs)** in the public procurement market, contracting authorities should be encouraged to divide contracts into lots, **and be obliged to state the reasons for not doing so**. Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.

*Amendment*

(30) **Public procurement should be adapted to the needs of small and medium-sized enterprises (SMEs). Contracting authorities should make use of the Code of Best Practices set out in the Commission Staff Working Document of 25 June 2008 entitled 'European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts', providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation.** In order to foster the involvement of SMEs in the public procurement market, **and to enhance competition**, contracting authorities should be encouraged **in particular to give consideration** to dividing contracts into lots. Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.

Or. en

**Amendment 43**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 825 Engel, Le Grip; AM 823 Salvini, Speroni, AM 824 Rühle, 826 Garcés Ramón, 827 Pietikäinen, 828 Salvini, Speroni, AM 829 Karas, 830 Garcés Ramón, 831 Echeverría , 832 Salvini, Speroni, 833 Salvini, Speroni, 834 Harbour, Kožušník, 835 Salvini, Enrico Speroni, 836 Garcés Ramón, 837 Arias Echeverria, 838 Garcés Ramón, AM 839 de Jong, Gustafsson; REGI 53,

**Proposal for a directive**

**Article 31**

*Text proposed by the Commission*

*Amendment*

Article 31

Article 31

Framework agreements

Framework agreements

1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

A framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

A framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

The term of a framework agreement shall not exceed **four** years, save in **exceptional** cases **duly justified, in particular by the subject of the framework agreement.**

The term of a framework agreement shall not exceed **five** years, save in **the following** cases:

***(a) the subject of the framework agreement concerns works or services that will take longer than five years to carry out; or***

***(b) economic operators need to make investments for which the amortisation period is longer than five years or which are linked to maintenance, the recruitment of suitable staff to perform the contract or the training of staff to***

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.

Those procedures may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators originally party to the framework agreement.

Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid

*perform the contract.*

***The term of a framework agreement shall be based on the lifecycle of the work, service or supply.***

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.

Those procedures may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators originally party to the framework agreement.

Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

***After conclusion of the framework agreement, the number of participating contracting authorities may only be increased where the following conditions are met:***

***(a) the framework agreement has been concluded by a central purchasing body;***

***(b) the possibility of such an increase is expressly provided for in the contract notice;***

***(c) the scope for the increase can be determined on the basis of clear criteria; and***

***(d) all parties to the framework agreement agree to the increase.***

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid

down in the framework agreement.

For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:

(a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;

(b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.

5. The competition referred to in paragraph (4)(b) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

(a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;

(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in

down in the framework agreement.

For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

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(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in

tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d) contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d) contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

Or. en

#### **Amendment 44**

##### **EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 840 (Karas), AM 841 (de Jong), 842 Karas, AM 843 (Karas), 844 Karas, 845 Karas, 846 van de Camp, 847 de Jong Gustafsson, 848 van de Camp, 849 de Jong, 850 van de Camp, 851 de Jong, AM 852 (Karas)

#### **Proposal for a directive**

##### **Article 32**

###### *Text proposed by the Commission*

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

2. In order to award contracts under a dynamic purchasing system, contracting authorities shall follow the rules of the restricted procedure. All the candidates satisfying the selection criteria shall be admitted to the system; the number of candidates to be admitted to the system shall not be limited in accordance with Article 64. All communications in the context of a dynamic purchasing system shall only be made with electronic means

###### *Amendment*

1. For commonly used **goods and services** purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

2. In order to award contracts under a dynamic purchasing system, contracting authorities shall follow the rules of the restricted procedure. All the candidates satisfying the selection criteria shall be admitted to the system; the number of candidates to be admitted to the system shall not be limited in accordance with Article 64. All communications in the context of a dynamic purchasing system shall only be made with electronic means

in accordance with Article 19(2) to (6).

3. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:

(a) publish a call for competition making it clear that a dynamic purchasing system is involved;

(b) indicate in the specifications at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;

(c) offer unrestricted and full direct access, as long as the system is valid, to the specifications and to any additional documents in conformity with Article 51.

4. Contracting authorities shall give any economic operator, throughout the entire duration of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting authorities shall finalise their assessment of such requests according to the selection criteria within 10 working days following their receipt.

The contracting authority shall inform the economic operator referred to in the first subparagraph at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

5. Contracting authorities shall invite all qualified participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 52.

They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing

in accordance with Article 19(2) to (6).

3. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:

(a) publish a call for competition making it clear that a dynamic purchasing system is involved ***and describe how the procedure operates***;

(b) indicate in the specifications at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;

(c) offer unrestricted and full direct access, as long as the system is valid, to the specifications and to any additional documents in conformity with Article 51.

4. Contracting authorities shall give any economic operator, throughout the entire duration of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting authorities shall finalise their assessment of such requests according to the selection criteria within 10 working days following their receipt.

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5. Contracting authorities shall invite all qualified participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 52.

They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing

system or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in duration, using the following standard forms:

(a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

(b) where the system is terminated, a contract award notice referred to in Article 48.

7. No charges may be billed to the interested economic operators or to parties to the dynamic purchasing system.

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6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in duration, using the following standard forms:

(a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

(b) where the system is terminated, a contract award notice referred to in Article 48.

7. No charges may be billed **during the award procedure** to the interested economic operators or to parties to the dynamic purchasing system.

Or. en

## **Amendment 45**

### **EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 58 (Tarabella), AM 59 (Tarabella), AM 853 (Heidi Ruöhle), AM 854 (Weiler), 855 Pietikäinen, AM 856 (de Jong, Gustafsson), 857 Tarabella, AM 858 (Schwab, Engel, Collin-Langen, Verheyen, Cruetzmann), 859 Repo, 860 Baldassarre Comi, 861 de Jong Gustafsson, REGI 54, AM 58 Rapporteur, AM 59 Rapporteur, ITRE53

## **Proposal for a directive**

### **Article 33**

#### *Text proposed by the Commission*

1. Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

For this purpose, contracting authorities shall use a repetitive electronic process

#### *Amendment*

1. **For commonly used goods and services**, contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

For this purpose, contracting authorities shall use a repetitive electronic process

(electronic auction), which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

2. In open, restricted or competitive procedures with negotiation, the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the tender specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in Article 31(4)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 32.

3. The electronic auction shall be based on *one of the the following criteria:*

*(a) solely on prices where the contract is awarded to the tender offering the lowest cost;*

*(b) on prices and/or on the new values of the features of the tenders indicated in the specifications where the contract is awarded to the most economically advantageous tender.*

4. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice or in the invitation to confirm interest. The specifications shall include at least the information set out in Annex VII.

5. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award *criteria or* criteria and with the weighting fixed for them.

A tender shall be considered admissible where it has been submitted by a qualified

(electronic auction), which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

2. In open, restricted or competitive procedures with negotiation, the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the tender specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in Article 31(4)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 32.

3. The electronic auction shall be based on *prices and/or on the new values of certain elements of the tenders indicated in the specifications.*

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5. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criteria and with the weighting fixed for them.

A tender shall be considered admissible where it has been submitted by a qualified

tenderer and is in conformity with the technical specifications.

All tenderers that have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

**6. *Where the contract is to be awarded on the basis of the most economically advantageous tender***, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in the specifications. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

7. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment and they may, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announcing the number of participants in

tenderer and is in conformity with the technical specifications.

All tenderers that have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

6. The invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5)

The invitation shall also state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in the specifications. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

7. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment and they may, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announcing the number of participants in

any specific phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

8. Contracting authorities shall close an electronic auction in one or more of the following manners:

(a) at the previously indicated date and time;

(b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction;

(c) when the previously indicated number of phases in the auction has been completed.

Where the contracting authorities have decided to close an electronic auction in accordance with point (c), possibly in combination with the arrangements laid down in point (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

9. After closing an electronic auction contracting authorities shall award the contract in accordance with Article 66 on the basis of the results of the electronic auction.

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(a) at the previously indicated date and time;

(b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction;

(c) when the previously indicated number of phases in the auction has been completed.

Where the contracting authorities have decided to close an electronic auction in accordance with point (c), possibly in combination with the arrangements laid down in point (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

9. After closing an electronic auction contracting authorities shall award the contract in accordance with Article 66 on the basis of the results of the electronic auction.

Or. en

#### **Amendment 46**

##### **EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 35, 869 (Tarabella), AM 865 (Baldassarre, Comi), 864 Handzlik, von Thun und Hohenstein, Trzaskowski, 866 Pietikäinen, 867 Pietikäinen, 868 Handzlik, von Thun und Hohenstein, Trzaskowski

#### **Proposal for a directive**

##### **Article 35**

*Text proposed by the Commission*

1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.
  2. Member States shall provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.
  3. A contracting authority fulfils its obligations pursuant to this Directive when it procures by having recourse to centralised purchasing activities, to the extent that the procurement procedures concerned and their performance are conducted by the central procurement body **alone** in all its stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts.
- However, where certain stages of the procurement procedure or the performance of the ensuing contracts are carried out by the contracting authority concerned, the contracting authority continues to be responsible for fulfilling the obligations pursuant to this Directive in respect of the stages it conducts.
4. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements of Article 19.
  5. Contracting authorities may, without applying the procedures provided for in this Directive, choose a central purchasing body to provide centralised purchasing activities, including where the central purchasing body is remunerated for so doing.
  6. Central purchasing bodies shall ensure the documentation of all transactions performed in the course of the execution of

*Amendment*

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  3. A contracting authority fulfils its obligations pursuant to this Directive when it procures by having recourse to centralised purchasing activities, to the extent that the procurement procedures concerned and their performance are conducted by the central procurement body in all its stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts
- However, where certain stages of the procurement procedure or the performance of the ensuing contracts are carried out by the contracting authority concerned, the contracting authority continues to be responsible for fulfilling the obligations pursuant to this Directive in respect of the stages it conducts.
4. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements of Article 19.
  5. Contracting authorities may, without applying the procedures provided for in this Directive, choose a central purchasing body to provide centralised purchasing activities, including where the central purchasing body is remunerated for so doing.
  6. Central purchasing bodies shall ensure the documentation of all transactions performed in the course of the execution of

the contracts, framework agreements or dynamic purchasing systems they conclude in the course of their central purchasing activities.

the contracts, framework agreements or dynamic purchasing systems they conclude in the course of their central purchasing activities.

Or. en

#### **Amendment 47**

**EPP, S&D, ECR, Greens, GUE**

Compromise amendment replacing 839 de Jong Gustafsson, 1378 Essayah, EMPL 47, 1377 Rühle, 1379 Juvin, 1380 Arias Echeverria, 1381 Rühle, 1382 Arias Echeverria, ITRE 101, 1383 Schwab Engel CREutzmann, 1384 Rühle, 1385 Pietikäinen,

#### **Proposal for a directive**

##### **Article 73**

*Text proposed by the Commission*

##### Article 73

###### Termination of contracts

Member States shall ensure that contracting authorities have the possibility, under the conditions determined by the applicable national contract law, to terminate a public contract during its term, where one of the following conditions is fulfilled:

(a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4);

(b) a modification of the contract constitutes a new award within the meaning of Article 72;

(c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties due to the fact that a contracting authority belonging to that Member State has awarded the contract in question without complying with its obligations under the Treaties and this Directive.

*Amendment*

##### Article 73

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(a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4), ***except for legally enforced forms of private participation;***

(b) a modification of the contract constitutes a new award within the meaning of Article 72;

(c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties due to the fact that a contracting authority belonging to that Member State has awarded the contract in question without complying with its obligations under the Treaties and this Directive.

***2. Member States shall ensure that contracting authorities have the possibility, under the conditions determined by the applicable national contract law, to terminate a framework agreement during its term, where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under the agreement.***

Or. en

#### **Amendment 48**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 237 (de Jong)

#### **Proposal for a directive**

##### **Recital 24**

###### *Text proposed by the Commission*

(24) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, such techniques help increase competition and professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting authorities, without preventing the continuation of less institutionalised and systematic common purchasing or the established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting authority. Rules should also be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, among the central purchasing body and the contracting authorities procuring from or through the central purchasing body.

###### *Amendment*

(24) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, such techniques help increase competition and professionalise public purchasing. ***Specific attention should be paid to the accessibility of any such procedures for small and medium-sized enterprises.*** Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting authorities, without preventing the continuation of less institutionalised and systematic common purchasing or the established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting authority. Rules should also be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies,

Where the latter has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting authority conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

among the central purchasing body and the contracting authorities procuring from or through the central purchasing body. Where the latter has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting authority conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

Or. en

#### **Amendment 49**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 238 Rühle, 239 Verheyen, Weisgerber, Collin-Langen, Mayer, 240 de Jong Gustafsson, 241 Juvin, 242 Vergnaud

#### **Proposal for a directive**

##### **Recital 25**

###### *Text proposed by the Commission*

(25) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period of two years.

###### *Amendment*

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Or. en



**Amendment 50**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 975 (Rühle); 976 (Engel, Schwab), 977 (Tarabella), 978 (de Jong), 979 (Rochefort); 980 (Løkkegaard, Jürgen Creutzmann, Jens Rohde), 981 (Rühle), 982 (Engel, Schwab), 983 (Rochefort), 984 (Prendergast), 985 (Rühle), 986 (de Jong, Gustafsson), 987 (Rühle), 988 (Rochefort), JURI 3? ITRE 66, ITRE 67

**Proposal for a directive**

**Article 43**

*Text proposed by the Commission*

*Amendment*

1. Contracting authorities *may* authorise tenderers to submit variants. ***They shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorise variants. Variants shall not be authorised without such indication.***

1. Contracting authorities ***shall*** authorise tenderers to submit variants, ***along with a basic proposal, as long as they are linked to the subject matter of the contract.***

***In duly justified cases, contracting authorities may decide not to authorise variants, provided that they indicate the reasons for their decision in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest.***

2. ***Contracting authorities authorising variants shall state*** in the procurement documents the minimum requirements to be met by the variants and any ***specific*** requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

2. ***Variants shall be authorised*** in the procurement documents ***which define*** the minimum requirements to be met by the variants and any requirements for their presentation. ***These minimum requirements are mandatory to ensure that variants will not affect the subject matter of the contract.*** They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

3. Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into

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consideration.

In procedures for awarding public supply or service contracts, contracting authorities ***that have authorised variants*** shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

consideration.

In procedures for awarding public supply or service contracts, contracting authorities shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

Or. en

## CLUSTER 8 - Sound procedures

### Amendment 51

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 639 (Creutzmann), 644 (de Jong), 642 (Hedh), 1486 (Prendergast)

### Proposal for a directive

#### Recital 6

*Text proposed by the Commission*

(6) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition and jeopardising equal treatment of tenderers. Effective mechanisms should therefore be set up to prevent, identify and remedy conflicts of interest.

*Amendment*

(6) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition and jeopardising equal treatment of tenderers. Effective mechanisms should therefore be set up to prevent, identify and remedy conflicts of interest. ***In addition, in order to guarantee efficient whistleblowers' protection, Member States should ensure that any staff member who reports undisclosed conflicts in good faith can be protected against retaliation, harassment or deleterious actions. In this context, retaliation means any direct or indirect detrimental action recommended, threatened or taken against an individual because of such action.***

Or. en

### Amendment 52

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 608 Juvin, AM 610 Engel Poupakis

### Proposal for a directive

#### Recital 19 a (new)

***(19a) In order to ensure confidentiality during the procedure, contracting authorities should not disclose information that has been forwarded to it by economic operators which they have designated as confidential. Non-compliance with this obligation should render the contracting authority liable if harm can be clearly demonstrated by the economic operator.***

Or. en

**Amendment 53**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 254 (Pietikäinen), AM 13 (Rapporteur), AM 38 (Rapporteur)

**Proposal for a directive**

**Recital 32**

*Text proposed by the Commission*

*Amendment*

(32) Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through self-declarations, can result in considerable simplification for the benefit of both contracting authorities and economic operators. The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. Further simplification can be achieved through standardised documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs,

(32) Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through self-declarations, can result in considerable simplification for the benefit of both contracting authorities and economic operators. The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. Further simplification can be achieved through standardised documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs,

for whom they can substantially lessen the administrative burden.

for whom they can substantially lessen the administrative burden. ***In addition, it should be possible for groups or consortia of economic operators, notably of SMEs, to submit tenders or to put themselves forward together as candidates.***

Or. en

#### **Amendment 54**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 38 (Tarabella), AM 39 (Rapporteur), AM 599 (Ruehle), AM 600 (Harkin) AM 601 (Arias Echeverria)

#### **Proposal for a directive**

##### **Article 16**

###### *Text proposed by the Commission*

1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the contract is awarded, they would be required to be either natural or legal persons.

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, ***the names*** and relevant professional ***qualifications*** levels of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators, may submit tenders or put themselves forward as candidates. Contracting authorities shall not establish specific conditions for participation of such groups in procurement procedures which are not imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be

###### *Amendment*

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2. Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting authorities shall not establish specific conditions for participation of such groups in procurement procedures which are not imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be

required by the contracting authorities to assume a specific legal form.

required by the contracting authorities to assume a specific legal form.

***Contracting authorities shall give the possibility to a temporary association of economic operators to fulfil all technical, legal and financial requirements as a single entity, summing up the individual characteristics of the components of the group.***

Contracting authorities may establish specific conditions for the performance of the contract by a group, provided that those conditions are justified by objective reasons and proportionate. Those conditions may require a group to assume a specific legal form once it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

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Or. en

#### **Amendment 55**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 606 (Poupakis), AM 607 (Schwab, Weisgerber, Verheyen, Collin- Langen, Mayer) 608 (Juvin), AM 610 (Poupakis), AM 612 (De Jong, Gustafsson), AM 613 (Cofferati), AM 609 (Harkin) REGI 38, ITRE 37-38, JURI 20

#### **Proposal for a directive Article 18**

*Text proposed by the Commission*

*Amendment*

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

2. Contracting authorities may impose on economic operators requirements aimed at

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders

2. Contracting authorities may impose on economic operators requirements aimed at

protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure.

protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure.

**2a. This Article shall not prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.**

Or. en

## **Amendment 56**

### **EPP, S&D, ECR, Greens**

Compromise amendment replacing AM 42 (Tarabella), AM 43 (Tarabella), 626 (Macovei), 627 (Prendergast), 628 (Engel, Juvin, Wim van den Camp), 629 (Tarabella), 630 (Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski), 636 (Handzlik, Thun von Hohenstein, Trzaskowski), 631 (Engel, Juvin, van de Camp), 632, 633 (Tarabella), 634 (Ruehle), 635 (Ruehle), 637 (Ruehle), 640 (Ruehle), 638 (Creutzmann), 639 (Creutzmann), 642 (Hedth), 641 (Macovei), 643 (Macovei), 644 (de Jong, Gustafsson) TRAN 5-8

## **Proposal for a directive Article 21**

### *Text proposed by the Commission*

1. Member States shall **provide for rules** to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures **that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers, and the award of the contract**, so as to avoid any distortion of competition and ensure equal treatment of all **tenderers**.

The **notion of conflict** of interests shall at least cover any situation where **the categories of persons referred to in paragraph 2** have, directly or indirectly, a **private interest in the outcome of the procurement procedure**, which may be perceived to **impair the impartial and**

### *Amendment*

Member States shall **put in place mechanisms** to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures so as to avoid any distortion of competition and ensure equal treatment of all **economic operators** .

The **concept of conflicts** of interests shall at least cover any situation where **staff or decision-making members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure**

*objective performance of their duties.*

*or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal or common interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure .*

*For the purposes of this Article, ‘private interests’ means any family, emotional life, economic, political or other shared interests with the candidates or the tenderers, including conflicting professional interests.*

*deleted*

*2. The rules referred to in paragraph 1 shall apply to conflicts of interests involving at least the following categories of persons:*

*deleted*

*(a) staff members of the contracting authority, procurement service providers or staff members of other service providers who are involved in the conduct of the procurement procedure;*

*deleted*

*(b) the chairperson of the contracting authority and members of decision-making bodies of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.*

*deleted*

*3. Member States shall ensure in particular:*

*deleted*

*(a) that staff members referred to in paragraph 2(a) are required to disclose any conflict of interests in relation to any of the candidates or tenderers, as soon as they become aware of such conflicts, in order to enable the contracting authority to take remedial action;*

*deleted*

*(b) that candidates and tenderers, are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the*

*deleted*

*individual report referred to in Article 85 whether any candidate or tenderer has submitted a declaration.*

*In the event of a conflict of interests, the contracting authority shall take appropriate measures. Those measures may include the recusal of the staff member in question from involvement in the affected procurement procedure or the re-assignment of the staff member's duties and responsibilities. Where a conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.*

*deleted*

*Where privileged links are identified, the contracting authority shall immediately inform the oversight body designated in accordance with Article 84 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.*

*deleted*

*4. All measures taken pursuant to this Article shall be documented in the individual report referred to in Article 85.*

*deleted*

Or. en

#### **Amendment 57**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 886 (Pietikäinen), AM 887 (Rühle), AM 888 (Weisgerber, Verheyen, Collin Langen, Mayer, Schwab), AM 889 (Ruehle), AM 890 (Weisgerber), AM 891 (Correia de Campos), AM 892 (Engel, Pietikäinen), AM 893 (Juvén), AM 894 (Creutzmann) INTA 23, REGI 56

#### **Proposal for a directive**

##### **Article 39**

*Text proposed by the Commission*

*Amendment*

1. Before launching a procurement

1. Before launching a procurement

procedure, contracting authorities may conduct market consultations in order to assess the structure, capability and capacity of the market and to inform economic operators of their procurement plans and requirements..

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants, ***provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency.***

2. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders.

The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

procedure, contracting authorities may conduct market consultations in order to assess the structure, capability and capacity of the market and to inform economic operators of their procurement plans and requirements.

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants,

2. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. ***Contracting authorities shall:***

***(i) clarify in their invitation to participate in a consultation what information will be considered relevant and thus may be shared with all potential bidders; and***

***(ii) set out in detail the rights of and procedures available to consultation participants that allow them to protect confidential information.***

The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the individual report required by Article 85.

Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the individual report required by Article 85.

Or. en

## **Amendment 58**

### **EPP, S&D, ECR, Greens**

Compromise amendment replacing AM 140 (Tarabella), AM 1350 (Tarabella), AM 1351 (Arias Echeverria), AM 1352 (Juvín), AM 1353 (Arias Echeverria), AM 1354 (Tarabella), AM 1355 (Juvín), AM 1356 (Rühle), AM 1357 (Juvín), AM 1358 (Arias Echeverria), AM 1359 (Weisgerber, Verheyen, Collin-Langen, Mayer), AM 1360 (Rühle), AM 1361 (Weisgerber, Verheyen, Collin-Langen), AM 1362 (Engel, Le Grip), AM 1363 (Tarabella), AM 1364 (Harboru Kozusnik), AM 1365 (Juvín), AM 1366 (Arias Echeverria), AM 1367 (Comi), AM 1368 (Baldassarre), AM 1369 (Salvini, Speroni), AM 1370 (Creutzmann), AM 1371 (Tarabella), AM 1372 (Arias Echeverria), AM 1373 (Juvín), AM 1375 (Juvín), AM 1374 (Ruehle), AM 1376 (Schwab), ENVI 62, TRAN 41, ITRE 100, ITRE 101, EMPL 46, REGI83, JURI 38 TRAN 42,

## **Proposal for a directive**

### **Article 72**

#### *Text proposed by the Commission*

1. A substantial modification of the provisions of a public contract during its term shall be considered as a new award for the purposes of this Directive and shall require a new procurement procedure in accordance with this Directive.

2. ***A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. In any case,*** Without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

#### *Amendment*

1. A substantial modification of the provisions of a public contract during its term shall be considered as a new award for the purposes of this Directive and shall require a new procurement procedure in accordance with this Directive.

2. Without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

***(-a) it alters the nature of the contract;***

- (a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the selection of other candidates than those initially selected or would have allowed for awarding the contract to another tenderer;
- (b) the modification changes the economic balance of the contract in favour of the contractor;
- (c) the modification extends the *scope* of the contract considerably to encompass supplies, services or works not initially covered.

**3. *The replacement of the contractual partner shall be considered a substantial modification within the meaning of paragraph 1-***

*However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations, or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 **and** where it is below **5 %** of the price of the initial contract, provided that the modification does not alter the overall

***(-aa) it entails replacement of the contractual partner;***

- (a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the selection of other candidates than those initially selected or would have allowed for awarding the contract to another tenderer;
- (b) the modification changes the economic balance of the contract in favour of the contractor;
- (c) the modification extends the *subject* of the contract considerably to encompass supplies, services or works not initially covered.

***deleted***

*Paragraph 2, point (-aa), shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations, **transfer of capital or assets between undertakings or the taking-on of a contractual partner after his** insolvency, **by** another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive **or in case of the take-over of the main contractors' signatory status by the contracting authority accordingly to the Member State provisions in line with Article 71.***

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 **or** where it is below **10 %** of the price of the initial contract, provided that the modification does not alter the overall

nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.

6. By way of derogation from paragraph 1, a substantial modification shall not require a new procurement procedure where the following cumulative conditions are fulfilled:

- (a) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;
- (b) the modification does not alter the overall nature of the contract;
- (c) any increase in price is not higher than 50 % of the value of the original contract.

Contracting authorities shall publish in the *Official Journal of the European Union* a notice on such modifications. Such notices shall contain the information set out in Annex VI part G and be published in accordance with Article 49.

7. Contracting authorities **shall** not **have have recourse to** modifications of the

nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options ***or in the form of a price revision clause***. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.

6. By way of derogation from paragraph 1, a substantial modification shall not require a new procurement procedure where the following cumulative conditions are fulfilled:

- (a) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;
- (b) the modification does not alter the overall nature of the contract;
- (c) any increase in price is not higher than 50 % of the value of the original contract.

Contracting authorities shall publish in the Official Journal of the European Union a notice on such modifications. Such notices shall contain the information set out in Annex VI part G and be published in accordance with Article 49.

***6a. For the purpose of the calculation of the price mentioned in paragraphs 4 and 6(c) of this Article, the updated price shall be the reference value when the contract includes an indexation clause.***

7. Contracting authorities **may** not **invoke the provisions of this Article**

contract *in the following cases*

*(a) where the modification would aim at remedying deficiencies in the performance of the contractor or the consequences, which can be remedied through the enforcement of contractual obligations;*

*(b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor.*

*concerning* modifications of the contract where the modification would aim at compensating risks of price increases that have been hedged by the contractor.

*deleted*

Or. en

**Amendment 59**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 1448 (Gebhardt, Sippel) AM 1449 (Gebhardt), AM 1450 (van de Camp), AM 1451 (Harbour, Kožušník), AM 1452 (Harbour, Kožušník), AM 1453 (Harbour, Kožušník), AM 1454 (Harbour, Kožušník), AM 1455 (Harbour, Kožušník), AM 1456 (Harbour, Kožušník), AM 1457 (Harbour, Kožušník) INTA 40,

**Proposal for a directive**

**Article 83**

*Text proposed by the Commission*

*Amendment*

Article 83

Article 83

Enforcement

***Implementation and enforcement by competent authorities and structures***

***In conformity with Council Directive 89/665/EEC, Member States shall ensure correct application of this Directive by effective, available and transparent mechanisms which complement the system in place for the review of decisions taken by contracting authorities.***

***1. In order to effectively ensure correct and efficient implementation, Member States shall make sure that at least the tasks set out in this Article are performed by one or more authorities or structures. They shall indicate to the Commission all authorities or structures competent for these tasks.***

***1a. Member States shall ensure that the application of public procurement rules is monitored including the implementation of projects co-financed by the Union with a view to detecting threats to the financial interests of the Union. This monitoring shall be used to prevent, detect and adequately report possible instances of procurement fraud, corruption, conflict of interest and other serious irregularities.***

***Where monitoring authorities or structures identify specific violations or systemic problems, they shall ~~be empowered to refer~~ ensure that those problems are referred to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national Parliaments or committees thereof.***

***1b. The results of the monitoring activities***

*pursuant to paragraph 1a shall be made available to the public through appropriate means of information. In particular, Member States shall publish, at least biennially, an overview of the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, hereunder possible cases of fraud and other illegal behaviours.*

*Member States shall transmit to the Commission on a biennial basis, a general overview of their national sustainable procurement policies, describing the relevant national action plans and initiatives and, where known, their practical implementation. They shall also indicate the success rate of SMEs in public procurement; where it is lower than 50 % in terms of values of contracts awarded to SMEs, Member States shall indicate whether any initiatives are in place to increase this success rate.*

*On the basis of the data received, the Commission shall regularly issue a report on the implementation and best practices of such policies in the internal market.*

*1c. Member States shall ensure that guidance on the interpretation and application of the Union public procurement law is available free of charge to assist contracting authorities and economic operators, in particular SMEs, in correctly applying the Union public procurement rules.*

*1d. Member States shall, without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, designate a contact point for cooperation with the Commission as regards the application of Union law and the implementation of the budget from the Union on the basis of Article 17 TFEU and Article 317 TFEU.*

***1e. Contracting authorities shall, at least for the duration of the contract, keep copies of all concluded contracts with a value equal to or greater than:***

***(a) 1 000 000 EUR in the case of public supply contracts or public service contracts;***

***(b) 10 000 000 EUR in the case of public works contracts.***

Or. en

## **Amendment 60**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 1460 (Rühle), AM 1461 (Harbour, Kožušník), AM 1462 (van de Camp), AM 1463 (Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski), AM 1464 (Simon), AM 1465 (Creutzmann), AM 1466 (Engel, Juvin, Gyürk, Schwab, Gáll-Pelcz, Corazza Bildt), AM 1467 (de Jong Gustafsson), AM 1468 (Verheyen, Collin Langen), AM 1469 (Manders), 1470 (Arias Echeverría), 1471 (Macovei), 1472 (Macovei), 1473 (Prendergast), 1474 (Engel, Juvin, Gyürk, Schwab, Gáll-Pelcz, Corazza Bildt), AM 1475 (Arias Echeverría), 1476 (Gebhardt, Sippel), 1477 (Macovei), 1478 (Macovei), 1479 and 1483 (Pietikäinen), 1480 (Macovei), 1481 and 1482 (Macovei), 1484 and 1485 (Cofferati), 1486 (Prendergast), 1487 (Cofferati), 1488 (Engel, Juvin, Gyürk, Schwab, Gáll-Pelcz, Corazza Bildt), 1489 (Arias Echeverría), 1490 (Engel, Juvin, Gyürk, Schwab, Gáll-Pelcz, Corazza Bildt), 1491 (Engel, Juvin, Gyürk, Schwab, Gáll-Pelcz, Corazza Bildt), 1492 (Engel, Juvin, Gyürk, Schwab, Gáll-Pelcz, Corazza Bildt), 1493 (Engel, Juvin, Gyürk, Schwab, Gáll-Pelcz, Corazza Bildt), 1494 (Engel, Schwab), 1495 (Engel, Juvin, Gyürk, Gáll-Pelcz), 1496 (Macovei), 1497 (Prendergast), 1498 (Macovei), 1499 (Prendergast), 1500 (Schwab Engel), 1501 (Macovei), 1502 (Engel, Juvin, Gyürk, Gáll-Pelcz), 1503 (Prendergast), 1504 (Engel, Juvin, Gyürk, Schwab, Gáll-Pelcz), AM 145 (Tarabella), AM 146 (Tarabella), TRAN 43, ENVI 63, JURI 45-46-47-48-49-50, REGI 92-93, ITRE 104-105-106-107-108-109, EMPL 51

## **Proposal for a directive**

### **Article 84**

*Text proposed by the Commission*

*Amendment*

#### **Article 84**

*deleted*

#### **Public oversight**

***1. Member States shall appoint a single independent body responsible for the oversight and coordination of implementation activities (hereinafter 'the oversight body'). Member States shall inform the Commission of their designation.***

*All contracting authorities shall be subject to such oversight.*

*2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests are avoided. The system of public oversight shall be transparent. For this purpose, all guidance and opinion documents and an annual report illustrating the implementation and application of rules laid down in this Directive shall be published.*

*The annual report shall include the following:*

*(a) an indication of the success rate of small and medium-sized enterprises (SMEs) in public procurement; where the percentage is lower than 50 % in terms of values of contracts awarded to SMEs, the report shall provide an analysis of the reasons therefore;*

*(b) a global overview of the implementation of sustainable procurement policies, including on procedures taking into account considerations linked to the protection of the environment, social inclusion including accessibility for persons with disabilities, or fostering innovation;*

*(c) information on the monitoring and follow-up of breaches to procurement rules affecting the budget of the Union in accordance with paragraphs 3 to 5 of the present article;*

*(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union.*

*3. The oversight body shall be responsible for the following tasks:*

*(a) monitoring the application of public procurement rules and the related practice by contracting authorities and in*

*particular by central purchasing bodies;*

*(b) providing legal advice to contracting authorities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;*

*(c) issuing own-initiative opinions and guidance on questions of general interest pertaining to the interpretation and application of public procurement rules, on recurring questions and on systemic difficulties related to the application of public procurement rules, in the light of the provisions of this Directive and of the relevant case-law of the Court of Justice of the European Union;*

*(d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;*

*(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;*

*(f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting authorities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;*

*(g) monitoring the decisions taken by national courts and authorities following a ruling given by the Court of Justice of the European Union on the basis of Article 267 of the Treaty or findings of the European Court of Auditors establishing violations of Union public procurement rules related to projects cofinanced by the Union; the oversight body shall report to the European Anti-Fraud Office any infringement to Union procurement*

*procedures where these were related to contracts directly or indirectly funded by the European Union.*

*The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of Directive 89/665/EEC.*

*Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting authorities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.*

*4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.*

*The Commission may in particular refer to the oversight body the treatment of individual cases where a contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public procurement rules and principles identified by the Commission.*

*The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules*

*affecting projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.*

*5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting authorities' decisions comply with this Directive and the principles of the Treaty shall not replace or prejudge the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case pursuant to paragraph 4, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.*

*6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or greater than*

*(a) 1 000 000 EUR in the case of public supply contracts or public service contracts;*

*(b) 10 000 000 EUR in the case of public works contracts.*

*7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon written request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition*

*between them.*

*Access to the parts that may be released shall be given within a reasonable delay and no later than 45 days from the date of the request.*

*The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of information should be allowed to make it public.*

*8. A summary of all the activities carried out by the oversight body in accordance with paragraphs 1 to 7 shall be included in the annual report referred to in paragraph 2.*

Or. en

#### **Amendment 61**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 1505 (Harbour, Kožušník), AM 1506 (Rühle), AM 1507 (Harbour, Kožušník), AM 1508 (Harbour, Kožušník), AM 1509 (Harbour, Kožušník), AM 1510 (Gebhardt, Sippel), 1511 (Rühle), 1512 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), 1513 (Harbour, Kožušník), 1514 (Rühle), 1515 (Harbour, Kožušník), 1516 (van de Camp), 1517 (Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski) AM 1518 (Creutzmann), AM 1519 (Rühle), AM 1520 (Harbour, Kožušník), AM 1521 (Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski), AM 1522 (Creutzmann), REGI 94, EMPL 52, REGI 95

#### **Proposal for a directive**

##### **Article 85**

*Text proposed by the Commission*

*Amendment*

Article 85

Article 85

Individual reports on procedures for the award of contracts

Individual reports on procedures for the award of contracts

*For every contract or framework agreement, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least*

*For all procurements with a value equal to or greater than the thresholds laid down in Article 4 of this Directive, contracting authorities shall draw up a written report which shall include at least the following:*

the following:

(a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;

(b) the names of the **successful** candidates or tenderers and the reasons for their selection;

(c) the names of the candidates or tenderers rejected and the reasons for their rejection;

(d) the reasons for the rejection of tenders found to be abnormally low;

(e) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;

(f) for negotiated procedures without prior publication, the circumstances referred to in Article 30 which justify the use of this procedure;

(g) where **necessary**, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system

(h) where applicable, conflicts of interests detected and subsequent measures taken.

(a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;

(b) **where applicable, the results of the qualitative selection and/or reduction of numbers pursuant to Article 64 and 65, namely**

(i) the names of the **selected** candidates or tenderers and the reasons for their selection;

(ii) the names of the candidates or tenderers rejected and the reasons for their rejection;

(c) the reasons for the rejection of tenders found to be abnormally low;

(d) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties **and information on their subcontractors including their names, contact details and legal representatives**

(e) **for competitive procedures with negotiations and competitive dialogues, the circumstances laid down in Article 24 which justify the use of this procedure;**

(f) for negotiated procedures without prior publication, the circumstances referred to in Article 30 which justify the use of this procedure;

(g) where **applicable**, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system

(h) where applicable, conflicts of interests detected and subsequent measures taken.

**To the extent that the contract award notice drawn up pursuant to Article 48 contains the information required in this paragraph, contracting authorities may**

The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall **document** all stages in the procurement procedure, **including all** communications with economic operators **and internal deliberations**, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

The report, or its main elements, shall be communicated to the Commission or to the **national oversight body** where they so request.

*refer to that notice.*

The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall **ensure that they keep sufficient documentation to justify decisions taken in** all stages in the procurement procedure, ~~**such as documentation on**~~ communications with economic operators, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

The report, or its main elements, shall be communicated to the Commission or to the competent **authorities or structures referred to in Article 83** where they so request.

Or. en

## **Amendment 62**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 1523 (Rühle); AM 1524 (Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Jürgen Creutzmann), AM 1525 (van de Camp), 1526 (Verheyen), AM 1527 (de Jong, Gustafsson), AM 1528 (Harbour, Kožušník), AM 1529 (Harbour, Kožušník), AM 1530 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), AM 1531 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), AM 1532 (Harbour, Kožušník), AM 1533 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), AM 1534 (Harbour, Kožušník), AM 1535 (Harbour, Kožušník), AM 1536 (Harbour, Kožušník), AM 1537 (Harbour, Kožušník), AM 1538 (Harbour, Kožušník), AM 1539 (Harbour, Kožušník), AM 1540 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), AM 1541 (Harbour, Kožušník), AM 1542 (Rühle), AM 1543 (Macovei), TRAN 44

## **Proposal for a directive**

### **Article 86**

*Text proposed by the Commission*

Article 86

National reporting **and lists of contracting authorities**

1. **The bodies established or appointed in accordance with Article 84** shall forward to the Commission **an implementation and**

*Amendment*

Article 86

National reporting

1. **Member States** shall forward to the Commission **a** statistical report on each year, based on a standard form, not later

statistical report on each year, based on a standard form, not later than 31 October of the following year.

2. The report referred to in paragraph 1 shall contain at least the following information:

(a) a **complete and up-to-date** list of all central government authorities, sub-central contracting authorities and bodies governed by public law, **including sub-central authorities and associations of contracting authorities awarding** public contracts or framework agreements, indicating for each authority the unique identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;

(b) a **complete and up-to-date** list of all central purchasing bodies;

(c) for all contracts above the thresholds laid down in Article 4 of this Directive:

**(i) the number and value of contracts awarded broken down for each type of authority by procedure and by works, supplies and services identified by division of the CPV nomenclature;**

**(ii) where the contracts have been concluded under the negotiated procedure without prior publication, the data referred to in point (i) shall also be broken down according to the circumstances referred to in Article 30 and shall specify the number and value of contracts awarded, by Member State and third country of the successful contractor;**

**(d) for all contracts which fall below the thresholds laid down in Article 4 of this Directive, but would be covered by this Directive if their value exceeded the threshold, the number and value of**

than 31 October of the following year.

2. The report referred to in paragraph 1 shall contain at least the following information:

(a) a list of all central government authorities, sub-central contracting authorities and bodies governed by public law, **which have awarded** public contracts or **concluded** framework agreements **during the year concerned**, indicating for each authority the unique identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;

(b) a list of all central purchasing bodies **which have awarded public contracts or concluded framework agreements during the year concerned;**

(c) for all contracts above the thresholds laid down in Article 4 of this Directive **the number and value of contracts awarded broken down for each type of authority by procedure and by works, supplies and services;**

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**deleted**

**deleted**

***contracts awarded broken down by each type of authority.***

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend Annex I, in order to update the list of contracting authorities following notifications from Member States, where such amendments prove necessary to correctly identify contracting authorities;

The Commission may periodically publish the list of bodies governed by public law transmitted according to point (a) of paragraph 2 for information in the *Official Journal of the European Union*.

4. Member States shall make available to the Commission information on their institutional organisation related to the implementation, monitoring and enforcement of this Directive, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules.

5. The Commission shall establish the standard form for the annual ***implementation and*** statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend Annex I, in order to update the list of contracting authorities following notifications from Member States, where such amendments prove necessary to correctly identify contracting authorities;

The Commission may periodically publish the list of bodies governed by public law transmitted according to point (a) of paragraph 2 for information in the *Official Journal of the European Union*.

4. Member States shall make available to the Commission information on their institutional organisation related to the implementation, monitoring and enforcement of this Directive, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules.

5. The Commission shall establish the standard form for the annual statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

Or. en

**Amendment 63**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 1544 (Harbour, Kožušník) 1545 (van de Camp), 1546 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), 1547 (Rühle), 1548 (Prendergast), 1549 (Rühle), AM 147 (Tarabella), AM 148 (Tarabella), AM 149 (Tarabella), AM 150 (Tarabella), AM 151 (Tarabella), AM 152 (Tarabella), AM 153 (Tarabella), JURI 51, REGI 96, ITRE 111, EMPL 53, REGI 97,

**Proposal for a directive  
Article 87**

Article 87

Assistance to contracting authorities **and businesses**

1. Member States shall make available technical support structures in order to provide legal and economic **advice**, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain **competent** assistance and **advice** on individual questions.

**2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive, Member States shall ensure that appropriate assistance can be obtained, including by electronic means or using existing networks dedicated to business assistance.**

**3. Specific administrative assistance shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such assistance shall at least cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.**

**Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection, and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be provided and which will be applicable to the works carried out on site or to the**

Article 87

Assistance to contracting authorities

Member States shall make available technical support structures in order to provide legal and economic **information**, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain **technical** assistance and **information** on individual questions, **in particular in relation to provisions contained in Articles 54, 55 and 71.**

**deleted**

**deleted**

**deleted**

*services provided during the performance of the contract.*

**4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.**

*deleted*

Or. en

#### **Amendment 64**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 1550 (Cofferati), 1551 (Rühle), 1552 (Harbour, Kožušník), 1553 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), 1554 (CREutzmann), 1555 (Handzlik, Gräfin von Thun und Hohenstein, Trzaskowski), REGI 98

#### **Proposal for a directive Article 88**

*Text proposed by the Commission*

*Amendment*

Article 88

Article 88

Administrative cooperation

Administrative cooperation

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation with one another, in order to ensure exchange of information on issues referred to in Articles 40, 41, 42, 55, 57, 59, 60, 61, 63 and 69. They shall ensure the confidentiality of the information which they exchange.

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation with one another, in order to ensure exchange of information on issues referred to in Articles 40, 41, 42, 55, 57, 59, 60, 61, 63 and 69. They shall ensure the confidentiality of the information which they exchange.

2. The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection legislation provided for in Directives 95/46/EC of the European Parliament and of the Council<sup>1</sup> and 2002/58/EC of the European Parliament and of the Council<sup>2</sup>.

2. The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection legislation provided for in Directives 95/46/EC of the European Parliament and of the Council<sup>3</sup> and 2002/58/EC of the European Parliament and of the Council<sup>4</sup>.

<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

<sup>2</sup> OJ L 201, 31.7.2002, p. 37.

<sup>3</sup> OJ L 281, 23.11.1995, p. 31.

<sup>4</sup> OJ L 201, 31.7.2002, p. 37.

**3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, the oversight bodies and the Commission. Member States shall publish and regularly update the list of liaison points. The oversight body shall be in charge of the coordination of such liaison points.**

4. The exchange of information shall take place via the Internal Market Information system established pursuant to Regulation (EU) N° XXX/XXXX of the European Parliament and Council<sup>1</sup> [proposal for a Regulation of the European Parliament and Council on the administrative cooperation through the Internal Market Information System ('the IMI Regulation') COM(2011) 522]. Member States shall supply information requested by other Member States within the shortest possible period of time.

*deleted*

4. The exchange of information shall take place via the Internal Market Information system established pursuant to Regulation (EU) N° XXX/XXXX of the European Parliament and Council<sup>2</sup> [proposal for a Regulation of the European Parliament and Council on the administrative cooperation through the Internal Market Information System ('the IMI Regulation') COM(2011) 522]. Member States shall supply information requested by other Member States within the shortest possible period of time.

Or. en

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<sup>1</sup> OJ L [...]

<sup>2</sup> OJ L [...]

**Amendment 65**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing +323-324 Pietikäinen, AM 325 to 339, +340-341 (Hedh), ENVI 18, ENVI 19, REGI 18, ENVI 20-24,EMPL 20, REGI 19, JURI 9, 342 Gebhardt, 343 Gebhardt, 344 Gebhardt, Tarabella 23

**Proposal for a directive**

**Article 1**

*Text proposed by the Commission*

*Amendment*

Article 1

Article 1

Subject matter and scope

Subject matter and scope

1. This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.

1. This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.

2. Procurement within the meaning of this Directive is the ***purchase or other forms of*** acquisition of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, ***whether or not the works, supplies or services are intended for a public purpose.***

2. Procurement within the meaning of this Directive is the acquisition of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities.

***An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.***

***2a. This Directive is without prejudice to the right of public authorities at all levels to decide whether, how and to what extent they want to perform public functions themselves pursuant to Protocol No 26 annexed to the treaties and Article 14 TFEU.***

***2b. This Directive does not affect the way in which the Member States organise***

**Amendment 66**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 24 Tarabella, AMs 345 to 377, JURI 10-13, REGI 21, EMPL 21; TRAN 2, ITRE 30, AM25 Rapporteur, ENVI 25, REGI 22, AM 26 Rapporteur

**Proposal for a directive**

**Article 2**

*Text proposed by the Commission*

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) contracting authorities' means the State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law;
- (2) 'central government authorities' means the contracting authorities listed in Annex I and, insofar as corrections or amendments have been made at national level, their successor entities;
- (3) 'sub-central contracting authorities' means all contracting authorities which are not central government authorities ;
- (4) 'sub-central contracting authorities' means all contracting authorities which are not central government authorities ;
- (5) 'local authorities' include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation (EC) No. 1059/2003;
- (6) 'bodies governed by public law' means bodies that have all of the following characteristics:

*Amendment*

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) contracting authorities' means the State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law;
- (2) 'central government authorities' means the contracting authorities listed in Annex I and, insofar as corrections or amendments have been made at national level, their successor entities;
- (3) 'sub-central contracting authorities' means all contracting authorities which are not central government authorities ;
- (4) 'sub-central contracting authorities' means all contracting authorities which are not central government authorities ;
- (5) 'local authorities' include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation (EC) No. 1059/2003;
- (6) 'bodies governed by public law' means bodies that have all of the following characteristics:

(a) they are established for or have the specific *purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity does not have the* purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) they have legal personality;

(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

(7) ‘public contracts’ means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive;

(8) ‘public works contracts’ means public contracts having as their object one of the following:

(a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex II;

(b) the execution, or both the design and execution, of a work;

(c) the realisation, *by whatever means*, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

(9) ‘a work’ means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to

(a) they are established for or have the specific purpose of meeting needs in the general interest, not having an industrial or commercial character

(b) they have legal personality;

(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

(7) ‘public contracts’ means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive;

(8) ‘public works contracts’ means public contracts having as their object one of the following:

(a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex II;

(b) the execution, or both the design and execution, of a work;

(c) the realisation of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

(9) ‘a work’ means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to

fulfil an economic or technical function;

(10) 'public supply contracts' means public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations;

(11) 'public service contracts' means public contracts having as their object the provision of services other than those referred to in point (8);

(12) 'economic operator' means any natural or legal person or public entity or group of such persons and/or entities which offers the execution of works and/or a work, the supply of products or the provision of services on the market;

(13) 'tenderer' means an economic operator that has submitted a tender;

(14) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation or in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;

(15) 'procurement documents' means **all documents** produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.

(16) 'centralised purchasing activities' means activities conducted on a permanent basis, in one of the following forms:

(a) the acquisition of supplies and/or

fulfil an economic or technical function;

(10) 'public supply contracts' means public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations;

(11) 'public service contracts' means public contracts having as their object the provision of services other than those referred to in point (8);

(12) 'economic operator' means any natural or legal person or public entity or group of such persons and/or entities which offers the execution of works and/or a work, the supply of products or the provision of services on the market;

(13) 'tenderer' means an economic operator that has submitted a tender;

(14) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation or in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;

(15) 'procurement documents' means **any document** produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.

(16) 'centralised purchasing activities' means activities conducted on a permanent basis, in one of the following forms:

(a) the acquisition of supplies and/or

services intended for contracting authorities,

(b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;

(17) ‘ancillary purchasing activities’ means activities consisting in the provision of support to purchasing activities, in particular in the following forms:

(a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;

(b) advice on the conduct or design of public procurement procedures;

(c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;

(18) ‘central purchasing body’ means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;

(19) ‘procurement service provider’ means a public or private body which offers ancillary purchasing activities on the market;

(20) ‘written’ or ‘in writing’ means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;

(21) ‘electronic means’ means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

(22) ‘life cycle’ means all consecutive *and/or* interlinked stages, including production, transport, use and maintenance, *throughout the existence of a product or a*

services intended for contracting authorities,

(b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;

(17) ‘ancillary purchasing activities’ means activities consisting in the provision of support to purchasing activities, in particular in the following forms:

(a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;

(b) advice on the conduct or design of public procurement procedures;

(c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;

(18) ‘central purchasing body’ means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;

(19) ‘procurement service provider’ means a public or private body which offers ancillary purchasing activities on the market;

(20) ‘written’ or ‘in writing’ means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;

(21) ‘electronic means’ means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

(22) ‘life cycle’ means all consecutive or interlinked stages *throughout the existence of a product or a works or the provision of a service*, including *research*,

*works or the provision of a service*, from raw material acquisition or generation of resources to disposal, clearance and finalisation.

(23) ‘design contests’ means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

*development*, production, transport, use and maintenance, from raw material acquisition or generation of resources to disposal, clearance and finalisation. *Life-cycle also covers environmental and social aspects of the production process.*

(23) ‘design contests’ means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;

*(23a) ‘innovation’ means the implementation of a new or significantly improved product (good or service), or process, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations that help solve societal challenges and/or support the European strategy for smart, sustainable and inclusive growth.*

Or. en

## **Amendment 67**

### **EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 383 de Jong, Gustafsson, 384 Salvini, Speroni, 385 de Jong, Gustafsson, 386 van de Camp, 387 Salvini, Speroni, 388 Weisgerber, Verheyen, Collin-Langen, Mayer, 389 de Jong, Gustafsson, 390 van de Camp, 391 Salvini, Speroni, 392 Schaldemose, 393 Engel Schwab, 394 Schaldemose, 395 Weisgerber, Verheyen, Collin-Langen, Mayer, 396 Pietikäinen, 397 de Jong, Gustafsson, 398 van de Camp, 399 Harbour Kozusnik, 400 Handzlik, Thun, Trzaskowski, 401 Rochefort, 402 Westphal, 403 Salvini Speroni, 404 Belet, 405 Lokkegaard Creutzmann Rohde REGI 23, REGI 24, REGI 25, INTA 16, ITRE 31

## **Proposal for a directive**

### **Article 4**

*Text proposed by the Commission*

Article 4

Thresholds amounts

This Directive shall apply to procurements

*Amendment*

Article 4

Thresholds amounts

This Directive shall apply to procurements

with a value exclusive of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

- (a) EUR 5 000 000 for public works contracts;
- (b) EUR 130 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;
- (c) EUR 200 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.
- (d) **EUR 500 000** for public contracts for social and other specific services listed in Annex XVI.

with a value exclusive of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

- (a) EUR 5 000 000 for public works contracts;
- (b) EUR 130 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;
- (c) EUR 200 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.
- (d) **EUR 750 000** for public contracts for social and other specific services listed in Annex XVI.

Or. en

#### **Amendment 68**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 413 Engel, van de Camp, Pietikäinen, AM 338 de Jong Gustafsson

#### **Proposal for a directive**

#### **Article 7a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 7a**

#### ***Exclusion for contracts falling under a fixed price regime***

***This Directive shall not apply to contracts which are subject by law to a fixed price, where the procured products or services do not differ significantly in terms of their composition or characteristics.***

Or. en

## **Amendment 69**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 415 Gebhardt, AM 446 Schwab, Collin Langen, Verheyen, Weisgerber, Creutzmann, AM 448 de Jong Gustafsson, AM 449 Westphal, AM 452 Rühle, AM 582 Hedh, ENVI 27, AM 437 Simon

### **Proposal for a directive**

#### **Article 7b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 7b**

***Exclusion for services awarded on the basis of an exclusive right***

***This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.***

Or. en

## **Amendment 70**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment linked to audiovisual and radio services

### **Proposal for a directive**

#### **Recital 13a**

*Text proposed by the Commission*

*Amendment*

***(13a) The awarding of public contracts for certain audiovisual and radio media services by media providers should allow aspects of cultural or social significance to be taken into account which render application of procurement rules inappropriate. For these reasons, an exception should therefore be made for public service contracts, awarded by the media service providers themselves, for the purchase, development, production or***

*co-production of off-the-shelf programmes and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme. It should also be clarified that this exclusion should apply equally to broadcast media services as well as on-demand services (non-linear services). However, this exclusion should not apply to the supply of technical equipment necessary for the production, co-production and broadcasting of such programmes.*

Or. en

#### **Amendment 71**

**EPP, S&D, ECR, Greens, GUE**

Compromise amendment replacing AM 1435 Estaras Ferragut, 1396 Estaras Ferragut

#### **Proposal for a directive**

#### **Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

*(13b) This Directive does not prevent Member States from keeping in place arrangements to ensure the continued provision and the quality of comprehensive and personalised care and the choice of staff providing such services to users by organisations that were providing them prior to the entry into force of this Directive.*

Or. en

#### **Amendment 72**

**EPP, S&D, ALDE, ECR, Greens, GUE**

Compromise amendment replacing AM 412 Motti, 413 Engel, van de Camp, Pietikäinen, 414 Gebhardt, 415 Gebhardt, 418 Juvin, 419 Rühle, 420 de Jong, Gustafsson, 421 Collin-Langen, Mayer, 422 Tarabella, 423 Harkin, 424 Simon, 425 Handzlik, Grafín von Thun und Hohenstein, Trzaskowski; 426 Harbour, Kožušnik, Bielan, Creutzmann, 427 Weisgerber, Verheyen, Collin-Langen; 428 Engel, van de Camp, Schwab; 429 Weiler, 430 Westphal, 431 Rühle, 432 Simon, 433 Creutzmann; AM 434 Simon, 435 Gebhardt, 436 Vergnaud, 437 Simon, 438 Rühle, 439 Tarabella, 440 Hedh, 441 Pietikäinen, 442 Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Andreas Schwab, AM 443 Rühle, AM 444 Schwab, Frank Engel, Sirpa Pietikäinen, Anja Weisgerber, 445 Harbour, Kožušnik, Creutzmann, 446

Schwab, Collin-Langen, Verheyen, Weisgerber, Creutzmann, 447 Weisgerber, Verheyen, Collin-Langen, Mayer, 448 de Jong, Gustafsson, 449 Westphal, AM 450 Westphal, AM 451 Juvin, 452 Rühle, 453 Rühle, 454 Rühle, 28-29 rapporteur, JURI 15-16-17-18, EMPL 22, REGI 28-29-30,

## Proposal for a directive

### Article 10

#### *Text proposed by the Commission*

#### Article 10

Specific exclusions for service contracts

This Directive shall not apply to public service contracts for:

(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

(b) the acquisition, development, production or co-production of programme material intended for **audiovisual** media services, **that are awarded by broadcasters**, or contracts for broadcasting **time that are awarded to audiovisual media service providers**;

(c) arbitration and conciliation services;

#### *Amendment*

#### Article 10

Specific exclusions for service contracts

This Directive shall not apply to public service contracts for:

(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

(b) the acquisition, development, production or co-production of programme material intended for media services, or contracts for broadcasting **or distribution and transmission; media services being defined as including all transmission and distribution using any form of electronic network**

(c) arbitration and conciliation services **and any of the following legal services:**

**(i) legal representation of a client in judicial proceedings before courts, tribunals or public authorities by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;**

**(ii) legal services provided by trustees, appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned;**

**(iii) legal services which in the Member State concerned are connected with the**

(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council central bank services and operations conducted with the European Financial Stability Facility;

(e) employment contracts;

(f) public passenger transport services by rail or metro.

*The audiovisual media services referred to in point (b) of the first paragraph shall include any transmission and distribution using any form of electronic network.*

*exercise of official authority*

*(iv) certification and authentication of documents by notaries;*

(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council, *or transactions by contracting authorities to raise money or capital*, central bank services and operations conducted with the European Financial Stability Facility;

(e) employment contracts;

*(ea) civil defence, civil protection services and danger prevention;*

(f) public passenger transport services by rail or metro.

*(fa) providing international assistance, including development aid;*

Or. en

### **Amendment 73**

**EPP, S&D, Greens, ECR**

Compromise amendment replacing AM 455 to 581, AMs 30 to 37 Rapporteur, ENVI 6, EMPL 26-27, REGI 31, ITRE 34-35, INTA 20, REGI 32,

### **Proposal for a directive**

#### **Article 11**

*Text proposed by the Commission*

Article 11

**Relations** between public authorities

1. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:

*Amendment*

Article 11

**Cooperation** between public authorities

1. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:

(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.

(b) at least **90 %** of the **activities** of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

(c) there is no private participation in the controlled legal person.

***A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.***

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.

3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a public contract ***without applying this*** Directive to a legal person which it controls jointly with other contracting authorities, where the

(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments; ***i.e. it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person;***

(b) at least **80 %** of the **average total turnover** of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

(c) there is no private participation in the controlled legal person ***with the exception of legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authority.***

2. Paragraph 1 also applies where a controlled entity, ***or entities***, which is a contracting authority awards a contract to its controlling entity, ***or entities***, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract ***with the exception of legally enforced forms of private participation in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authority or entity.***

3. A contracting authority, which does not exercise over a legal person control within the meaning of ***point (a) of paragraph 1 of this Article***, may nevertheless award a public contract ***outside of the scope of this*** Directive to a legal person which it controls jointly with other contracting

following conditions are fulfilled:

- (a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;
- (b) at least **90 %** of the **activities** of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;
- (c) there is no private participation in the controlled legal person.

For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:

- (a) the decision-making bodies of the controlled legal person are composed of representatives of **all** participating contracting authorities;
- (b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;
- (c) the controlled legal person does not pursue any interests which are **distinct from** that of the public authorities affiliated to it;
- (d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities.**

4. An agreement concluded between two or more contracting authorities shall **not be deemed to be a public contract within the meaning of Article 2(6)** of this Directive

authorities, where the following conditions are fulfilled:

- (a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;
- (b) at least **80 %** of the **average total turnover** of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;
- (c) there is no private participation in the controlled legal person **with the exception of legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authorities.**

For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:

- (a) the decision-making bodies of the controlled legal person are composed of representatives of **the** participating contracting authorities; **while one representative may represent one or many participating contracting authorities;**
- (b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;
- (c) the controlled legal person does not pursue any interests which are **in conflict with** that of the public authorities affiliated to it;

4. An agreement concluded between two or more contracting authorities shall **fall outside the scope** of this Directive where the following cumulative conditions are

where the following cumulative conditions are fulfilled:

(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;

(b) the agreement is governed only by considerations relating to the public interest;

***(c) the participating contracting authorities do not perform on the open market more than 10 % in terms of turnover of the activities which are relevant in the context of the agreement;***

***(d) the agreement does not involve financial transfers between the participating contracting authorities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies;***

(e) there is no private participation in any of the contracting authorities involved.

fulfilled:

(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties ***for the purpose of the performance of a shared public service task or the pooling of resources in order to enable them to perform their own tasks;***

(b) the agreement is governed only by considerations relating to the public interest;

***(c) there is no private participation in any of the contracting authorities involved with the exception of legally enforced forms of private participation in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authorities.***

***4a. This Directive shall not apply to agreements, decisions or other legal instruments, concluded between several contracting authorities as defined in Article 2(1), or groupings of contracting authorities as defined in Article 2(1) which make provision, in the context of the internal institutional and administrative organisation of a Member State and pursuant to applicable national law or regulation, for the transfer of powers or for the transfer of a public service task between the parties. There shall be no private participation in***

5. The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.

*The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.*

*any of the contracting authorities or entities involved.*

5. The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.

Or. en

**Amendment 74**  
**EPP, S&D**

Compromise amendment replacing AM 1298 Cofferati, 1299 Engel, Juvin, van de Camp, Le Grip, 1300 Vergnaud, 1301 Tarabella, 1302 Engel, Juvin, van de Camp, Poupakis, Le Grip, 1303 Vergnaud; 649 Tarabella;

**Proposal for a directive**  
**Articles 69a and 69b**

*Text proposed by the Commission*

*Amendment*

**Article 69a**

***Tenders comprising products originating in third countries***

***1. This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.***

***2. Contracting authorities may ask tenderers to provide information on the origin of the products in their tender, and their value. Statements on the tenderer's***

*honour shall be accepted as a preliminary means of proof. A contracting authority can ask, at any time in the procedure, for part or all of the documentation required. Any tender submitted for the award of a supply contract may be rejected where the value of the products originating in third countries, as determined in accordance with*

*Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.*

*3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 66 , preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this article, if the price difference does not exceed 3 %.*

*However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting authority to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.*

*4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.*

*5. The Commission shall submit an annual report to the European Parliament*

*and the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.*

*The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may, in the light of these developments, amend the provisions of this Article.*

#### *Article 69b*

*Relations with third countries as regards works, supplies and service contracts*

*1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of works, supplies or service contracts in third countries.*

*2. The Commission shall report to the European Parliament and the Council before 31 December 2014, and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.*

*3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation where it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:*

*(a) does not grant Union undertakings effective access comparable to that granted by the Union to undertakings from that third country;*

*(b) does not grant Union undertakings*

*national treatment or the same competitive opportunities as are available to national undertakings; or*

*c) grants undertakings from other third countries more favourable treatment than Union undertakings*

*4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international social and environmental law provisions listed in Annex XI when these undertakings have tried to secure the award of contracts in third countries.*

*5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:*

*(a) undertakings governed by the law of the third country in question;*

*(b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Union but having no direct and effective link with the economy of a Member State;*

*(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.*

*The Council shall act, by qualified majority, as soon as possible.*

*The Commission may propose these measures on its own initiative or at the request of a Member State.*

*6. This Article shall be without prejudice to the commitments of the Union in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.*

Or. en

## Amendment 75

EPP, S&D, ALDE, ECR, Greens

Compromise amendment replacing AMs 1389 to 1395

### Proposal for a directive

#### Article 74

##### *Text proposed by the Commission*

#### Article 74

Award of contracts for social and other specific services

Contracts for social and other specific services listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).

##### *Amendment*

#### Article 74

Award of contracts for social and other specific services

Contracts for social and other specific services listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).

Or. en

## Amendment 76

EPP, S&D, ALDE, ECR

Compromise amendment replacing AM 1397 to AM 1422, AM 142 Rapporteur, JURI 39, REGI 84, JURI 40, REGI 85, JURI 41-42, REGI 86-87,

### Proposal for a directive

#### Article 75

##### *Text proposed by the Commission*

#### Article 75

Publication of notices

1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a **contract notice**.

##### *Amendment*

#### Article 75

Publication of notices

1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a **prior information notice, which shall be published continuously and contain the information set out in Annex VI part H. The prior information notice shall indicate that the contract will be awarded without further publication and invite interested economic operators to express their interest in writing.**

2. Contracting authorities that have awarded a public contract for the services referred to in Article 74 shall make known the results of the procurement procedure by means of a contract award notice.

3. The *notices* referred to in *paragraphs 1 and 2* shall contain the information referred to in *Annexes VI Part H and I*, in accordance with the standard forms.

The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article 49.

2. Contracting authorities that have awarded a public contract for the services referred to in Article 74 shall make known the results of the procurement procedure by means of a contract award notice.

3. The *notice* referred to in *paragraph 2* shall contain the information referred to in *Annex VI Part I*, in accordance with the standard forms.

The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article 49.

Or. en

#### **Amendment 77**

**EPP, S&D, ALDE, ECR, GUE**

Compromise amendment replacing AM 1423 to 1443, EMPL49, REGI 88, AM 143, JURI 43-44, EMPL 50, REGI 89-90-91, AM 143-144 Rapporteur,

#### **Proposal for a directive**

##### **Article 76**

###### *Text proposed by the Commission*

##### Article 76

###### Principles of awarding contracts

1. Member States shall put in place appropriate procedures for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic operators and allowing contracting authorities to take into account the specificities of the services in question.

2. Member States shall ensure that contracting authorities may take into account the need to ensure quality, continuity, accessibility, availability and

###### *Amendment*

##### Article 76

###### Principles of awarding contracts

1. Member States shall put in place *simplified* procedures *in accordance with Article 75(1)*, for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic operators and allowing contracting authorities to take into account the specificities of the services in question.

2. Member States shall ensure that contracting authorities may take into account the need to ensure *high* quality, continuity, accessibility, *affordability*,

comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. Member States **may also provide** that the choice of the service provider **shall not be** made solely on the basis of the price for the provision of the service.

availability and comprehensiveness of the services, the specific needs of different categories of users, **including disadvantaged and vulnerable groups**, the involvement and empowerment of users and innovation. Member States **shall ensure** that the choice of the service provider **is** not made solely on the basis of the price for the provision of the service **but takes into account quality and sustainability criteria for social services as set out above.**

Or. en

### Amendment 78

EPP, S&D, ALDE, ECR

Compromise amendment replacing AM 1560 Rühle, 1561 Engel Schwab

### Proposal for a directive

#### Annex VI - Part H

*Text proposed by the Commission*

#### PART H

INFORMATION TO BE INCLUDED IN **CONTRACT NOTICES** CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, **telephone, fax number**, email and internet address of the contracting authority **and, where different, of the service from which additional information may be obtained.**
2. **Where appropriate, email or internet address at which the specifications and any supporting documents will be available.**
3. **Type of contracting authority and main activity exercised.**
4. **Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of**

*Amendment*

#### PART H

INFORMATION TO BE INCLUDED IN **PRIOR INFORMATION NOTICES** CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, email and internet address of the contracting authority.

*joint procurement is involved.*

**5. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.**

**6. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services**

**7. Description of the services and where applicable, incidental works and supplies to be procured**

**8. Estimated total value of contract(s); where the contract is divided into lots, this information shall be provided for each lot.**

**9. Conditions for participation, including (a) where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,**

**(b) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.**

**10. Time limit(s) for contacting the contracting authority in view of participation.**

**11. Brief description of the main features of the award procedure to be applied.**

**12. Any other relevant information.**

**2. Brief description of the contract in question including the estimated total value of the contract and CPV Nomenclature reference No(s).**

**3. As far as already known:**

**a) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services**

**b) time-frame for delivery or provision of goods, works or services and duration of the contract.**

**c) conditions for participation, including where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,**

**where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.**

**d) Brief description of the main features of the award procedure to be applied.**

Or. en

## **Amendment 79**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 1584 to 1593, ITRE 121, ENVI 66, ITRE122, REGI 99, EMPL 55

## **Proposal for a directive Annex XVI**

*Text proposed by the Commission**Amendment*

CPV Code	Description	CPV Code	Description
79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)	Health <b>and</b> social services	79611000-0 <b>75200000-8;</b> <b>75231200-6;</b> 75231240-8 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2) <b>and</b> <b>98133100-5 and</b> <b>98200000-5</b>	Health, social <b>and</b> <b>related</b> services
75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6) 75300000-9	Administrative educational, healthcare and cultural services	75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6) 75300000-9	Administrative educational, healthcare and cultural services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1 98000000-3	Compulsory social security services Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1 98000000-3 ,	Compulsory social security services <sup>1</sup> Benefit services Other

<sup>1</sup> **[1] These services are not covered by the present Directive where they are organised as non-economic services of general interest. Member States are free to organise the provision of compulsory social services or of other services as services of general interest or as non-economic services of general interest.**

	community, social and personal services	<b>55521100-9</b>	community, social and personal services
98120000-0	Services furnished by trade unions	98120000-0	Services furnished by trade unions
98131000-0	Religious services	98131000-0 <b><i>From 79600000-0 to 79635000-4 (except for 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9</i></b> <b><i>From 80100000-5 to 80660000-8 (except 80533000- 9, 80533100-0, 80533200-1)</i></b> <b><i>from 79100000-5 to 79140000-7, including</i></b>	Religious services <b><i>Personnel placement and supply services apart from employment contracts</i></b>  <b><i>Education and vocational education services</i></b>  <b><i>Legal services to the extent that they are not excluded under Article 10(c)</i></b>

Or. en

### **Amendment 80**

**EPP, S&D, ALDE, ECR**

Compromise amendment replacing AM 339, 379, 381, 382, 585, 586

### **Proposal for a directive**

#### **Article 14**

*Text proposed by the Commission*

*Amendment*

Article 14

Article 14

Defence and security

Defence and security

1. Subject to Article 346 of the Treaty on the Functioning of the European Union, this Directive shall apply to the awarding of public contracts and to design contests organised in the fields of defence and

1. Subject to Article 346 of the Treaty ***on the Functioning of the European Union***, this Directive shall apply to the awarding of public contracts and to design contests organised in the fields of defence and

security, with the exception of the following contracts:

(a) contracts *falling within the scope of Directive 2009/81/EC*;

(b) contracts *to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof*.

2. This Directive shall not apply to public contracts and design contests other than those referred to in paragraph 1 to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in a procurement procedure as provided for in this Directive.

security, with the exception of the following contracts:

(a) contracts *for which the application of the rules of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security, or the procurement and performance of the contract must be accompanied by special security measures in accordance with the laws regulations or administrative provisions in force in a Member State where the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures for instance such a referred to paragraph 2*;

(b) contracts *awarded in the framework of a cooperative programme referred to in Article 13 (c) of Directive 2009/81/EC*;

(c) *contracts awarded by a government to another government relating to works and services directly linked to military equipment or sensitive equipment, or works and services specifically for military purposes, or sensitive works and sensitive services*;

(d) *contracts awarded in a third country, carried out when forces are deployed outside the territory of the Union where operational needs require them to be concluded with economic operators located in the area of operations*.

2 This Directive shall not apply to public contracts and design contests other than those referred to in paragraph 1 to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in a procurement procedure as provided for in this Directive. *not otherwise exempted under paragraph 1, to the extent that the protection of the essential security interests of a Member*

*State cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting authority ~~or the contracting entity~~ makes available in a contract award procedure as provided for in this Directive.*

## ADDITIONAL COMPROMISES ON RECITALS

### Recital 1

#### **Amendment 81**

**EPP, S&D, GUE, ECR**169 (Rühle), AM 170 (Arias Echeverría)

#### **Proposal for a directive**

##### **Recital 1**

###### *Text proposed by the Commission*

(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the **Treaty** on the Functioning of the European Union, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.

###### *Amendment*

(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the **Treaties** on the Functioning of the European Union, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, **advertising**, proportionality, transparency **and efficient management of public funds and with the distribution of competencies as enshrined in Article 14 of the Treaty on the Functioning of the European Union and Protocol No 26. The European regulation of public procurement should respect the wide discretion of public authorities in carrying out their public service tasks.** However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.

Or. en

### Recital 2

#### **Amendment 82**

**S&D, GUE, ECR**AM 1 (Tarabella), AM 173 (Rühle), AM 174 (Corazza Bildt), AM 175

## Proposal for a directive

### Recital 2

#### *Text proposed by the Commission*

(2) Public procurement plays a key role in the Europe 2020 strategy<sup>12</sup> as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors<sup>13</sup> and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>14</sup> have to be revised and modernised in order to **increase** the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

#### *Amendment*

(2) Public procurement plays a key role in the Europe 2020 strategy<sup>12</sup> as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors<sup>13</sup> and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>14</sup> have to be revised and modernised in order to **enable procurer to make better use of public procurement in support of sustainable development and other common societal goals, thereby increasing** the efficiency of public spending, **ensuring best value for money and** facilitating in particular the participation of small and medium-sized enterprises in public procurement. There is also a need to **simplify the Directives, particularly with regard to how sustainability objectives can be incorporated into public procurement, and to** clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union. **This Directive provides legislation on how to buy. Contracting authorities may set demands that are stricter or go further than current Union legislation in order to reach the common objectives.**

**Recital 3b (new) linked to Article 1(3) (new) on non-economic services of general interest and social security legislation**

**Amendment 83**

**EPP, Greens, S&D, GUE, ECR**

**Proposal for a directive**

**Recital 3 b (new)**

*Text proposed by the Commission*

*Amendment*

*(3b) It is also appropriate to recall that this Directive should not affect the social security legislation of the Member States nor should it deal with the liberalisation of services of general economic interest, reserved to public or private entities, nor with the privatisation of public entities providing services. [Articles 1(2) and 1(6) of Directive 2006/123/EC]. It should equally be recalled that Member States are free to organise the provision of compulsory social services or of other services such as postal services either as services of general economic interest or as non-economic services of general interest or as a mixture thereof. It is appropriate to clarify that non-economic services of general interest should not fall within the scope of this Directive.*

Or. en

**Recital 5**

**Amendment 84**

**Greens, S&D, GUE, ECRAM 2 (Tarabella), 181 Stihler, AM 182 (Rühle), AM 183 (Pietikäinen), AM 184 (de Jong, Gustafsson), AM 185 (Weiler)+ AM 186 + ENVI 6 + JURI 1 + EMPL 3 + ITRE 3 + ENVI 4**

**Proposal for a directive**

**Recital 5**

*Text proposed by the Commission*

(5) Under Article **11** of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring **that they can obtain** the best value for money for their contracts.

*Amendment*

(5) Under Article **9, 10 and 11** of the Treaty on the Functioning of the European Union, environmental protection requirements **and social considerations** must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development **and how they can use their discretionary power to select award criteria and contract performance clauses with the aim of achieving sustainable public procurement**, whilst ensuring the **link to the subject matter of the contract and obtaining** best value for money for their contracts.

Or. en

**Recital 10a on reciprocity**

**Amendment 85**

***N.b.: This compromise has been withdrawn and thus deleted from the list. However, the numbering has been kept, i.e. after CA 84 it goes to CA 86.***

**Amendment 85**

**EPP, S&D, GUE, ECR**

**Proposal for a directive**

**Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

~~***(10a) Having regard to current discussions on horizontal provisions governing relations with third countries in the context of public procurement, it is appropriate to maintain the status quo of the regime which is currently applicable to the utilities sector pursuant to Articles 58 and 59 of Directive 2004/17/EC as well as to introduce the same provisions in this Directive, in order to ensure***~~

**Recital 11 on threshold for social services**

**Amendment 86**

**EPP, Greens, S&D, ALDE, ECR**(Harbour, Kožušník)

**Proposal for a directive**

**Recital 11**

*Text proposed by the Commission*

(11) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of **EUR 500 000**. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality

*Amendment*

(11) ***The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation<sup>16</sup> demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. Some*** categories of services continue by their very nature to have a limited cross-border dimension, ***for example*** what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of **EUR 750 000**. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic

Framework for Social Services of the European Union's Social Protection Committee<sup>17</sup>. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee<sup>17</sup>. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination. ***This Directive does not apply to tried and tested procedures in Member States that are based on the users free choice of service providers for services of general interest (i.e. voucher system, free choice model, triangular relationship) provided that account is taken of the general Treaty principles of equal treatment, transparency and non-discrimination.***

Or. en

#### **Recital 14 on public public cooperation**

##### **Amendment 87**

**EPP, ECR, ALDE, S&D**AM 7 (Tarabella) + **AM 209 (Rühle)**, AM 210 (de Jong, Gustafsson), AM 211 (Juvén), AM 212 (Busoi), AM 213 (Creutzmann), AM 214 (Tarabella), JURI 3

##### **Proposal for a directive**

##### **Recital 14**

*Text proposed by the Commission*

(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public

*Amendment*

(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public

procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. **However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.**

procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. **However, the application of public procurement rules should not interfere with the right of public authorities to decide freely how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition. *In case any of the cumulative conditions for an exemption from the scope is not fulfilled any more during the term of a contract or cooperation that has been excluded from the procurement rules, that ongoing contract or cooperation has to be opened to competition through regular procurement procedures.***

Or. en

### **Recital 17 on innovation**

## Amendment 88

EPP, ECR, ALDE, Greens, S&DAM 227 (Harbour, Kožušník, Engel), AM 229 (Manders)

### Proposal for a directive

#### Recital 17

##### *Text proposed by the Commission*

(17) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to *spur* innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and *thus* promoting sustainable economic growth. This *directive* should contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets. *A* specific procurement procedure should *therefore be provided for which allows* contracting authorities to establish *a long-term* innovation partnership for the development and subsequent purchase of *a* new, innovative *product, service* or works provided *it* can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary *'market-pull'*, incentivising the development of *an* innovative *solution* without foreclosing the market.

##### *Amendment*

(17) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to *drive* innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and promoting sustainable economic growth. *An innovative procurement model is detailed in the Commission's communication on pre-commercial procurement*<sup>1</sup>. *This model promotes the take up in the procurement of research and development services which do not fall within the scope of this Directive. This model, which has been written into this Directive, is recognised and will be available for all contracting authorities to consider. This Directive should however contribute to facilitating the public procurement of innovation more generally, and help Member States in achieving the Innovation Union targets. Where a need for the development of an innovative product, service or works and the subsequent purchase of the resulting output cannot be met by solutions already available on the market, contracting authorities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This new procedure should allow* contracting

authorities to establish *an* innovation partnership for the development and subsequent purchase of new, innovative *products, services* or works, provided *that these* can be delivered to agreed performance levels and costs. The *procedure should be based on the rules applying to the competitive procedure with negotiations and contracts should be awarded on the sole basis of the most economically advantageous tender, which is the most suited to comparing tenders for innovative solutions. Whether the innovation partnership concerns a very large project or a smaller project, it* should be structured in such ~~as~~ a way that it can provide the necessary "*market pull*", incentivising the development of innovative *solutions* without foreclosing the market. *Contracting authorities should therefore not misuse innovation partnerships to prevent, restrict or distort competition. In addition, when setting the terms and conditions for procurement, contracting authorities should be allowed to establish innovative characteristics, including best available techniques, as a criterion relating to the subject of the contract concerned.*

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<sup>1</sup> *COM (2007) 799 final: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Pre-commercial procurement: driving innovation to ensure sustainable high quality public services in Europe.*

Or. en

## **Recital 19 on e-procurement and 3D modelling**

### **Amendment 89**

**EPP, S&D, ALDE, ECR, Greens**  
Compromise amendment replacing

**Proposal for a directive**  
**Recital 19**

*Text proposed by the Commission*

(19) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.

Or. en

**Recital 43 a on sub-contracting**

**Amendment 90**

***N.b.: This compromise has been withdrawn and thus deleted from the list. However, the numbering has been kept, i.e. after CA 89 it goes to CA 91.***

**Recital 43a on subcontracting**

*Amendment*

(19) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures. ***In addition, the submission of building information electronic modelling tools for works contracts should be encouraged in order to modernise the procurement process and ensure greater efficiencies are achieved in the public procurement of works covered by this Directive, in particular in relation to taking into account lifecycle costs and sustainability criteria.***

**Amendment 90**

**EPP, S&D** AM 298 (Tarabella, Cofferati) + JURI 7

**Proposal for a directive**

**Recital 43 a new**

*Text proposed by the Commission*

*Amendment*

~~(43a) In order to ensure that public procurement functions correctly, subcontracting should be properly regulated. The contracting authority should be informed, in the tenders submitted, of the parts of the contract which a bidder may intend to subcontract, along with any subcontractors proposed. Any change in the subcontracting chain for the current contract should be made in such a way as to ensure that the contract is performed in accordance with the tender submitted and should be agreed by the contracting authority. The contracting authority may make arrangements for the direct payment of the subcontractors, insofar as this is permitted by the nature of the contract itself. Finally, a system of liability should be established throughout the subcontracting chain.~~

Or. en

**Recital 49**

**Amendment 91**

**EPP, ECR, GUE, ALDE, S&D**, AM 303 (Rühle), 304 (Harbour, Kozusnik), 305 (Cornelis, de Jong)

**Proposal for a directive**

**Recital 49**

*Text proposed by the Commission*

*Amendment*

(49) The evaluation has shown that **Member States do not consistently and systematically monitor the implementation and functioning** of public procurement rules. **This has a negative impact on the correct implementation of provisions**

(49) The evaluation has shown that **there is still considerable room for improvement in the application** of the Union public procurement rules. **In view of a more efficient and consistent application of the rules, it is on the one hand essential to get**

*stemming from these directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the tasks entrusted to such bodies vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, improve legal certainty for businesses and contracting authorities, and contribute to establishing a level playing field. Such mechanisms could serve as tools for the detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate these mechanisms to ensure consistent application, control and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.*

*a good overview on possible structural problems and general patterns in national procurement policies, in order to address possible problems in a more targeted way. This overview should be gained through appropriate monitoring, the results of which should be regularly published, in order to allow an informed debate on possible improvements of procurement rules and practice. On the other hand, better guidance and assistance to contracting authorities and economic operators could also greatly contribute to enhancing the efficiency of public procurement, through better knowledge, increased legal certainty and professionalisation of procurement practices; such guidance should be made available to contracting authorities and economic operators wherever it appears necessary, to ensure correct application of the rules. For that purpose, Member States should ensure that competent authorities or structures are in charge of monitoring, implementation and control of public procurement.*

Or. en

## Recital 50 on governance

### **Amendment 92**

**EPP, ECR, ALDE, Greens, S&D, GUEAM** 306 (Rühle), 307 (Harbour, Kozusnik), 308 (de Jong), 309 (Handzlik, von Thun und Hohenstein, Trzaskowski), 310 (Creutzmann)

### **Proposal for a directive**

#### **Recital 50**

*Text proposed by the Commission*

*Amendment*

*(50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the*

*deleted*

*implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not jeopardized.*

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